

United States
Circuit Court of Appeals 7
For the Ninth Circuit.

J. P. ROSE,

Plaintiff in Error,

VS.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court
of the Territory of Alaska, Fourth Division.

Filed

AUG 30 1916

F. D. Monckton,
Clerk.

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Circuit Court of Appeals
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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

R. F. ROTH, U. S. Attorney, Fairbanks, Alaska,

H. E. PRATT, Asst. U. S. Attorney, Fairbanks,
Alaska,

Attorneys for Plaintiff and Defendant in Error.

LOUIS K. PRATT, Fairbanks, Alaska,

LERoy TOZIER, Fairbanks, Alaska,

Attorneys for Defendant and Plaintiff in Error.

[1*]

[Title of Court and Cause.]

Praeceptum for Transcript on Writ of Error.

To J. E. Clark, Clerk of said Court:

You will please prepare and certify to a transcript of the record in the above-entitled action, for the use of the United States Circuit Court of Appeals for the Ninth Circuit in connection with the writ of error heretofore sued out by the defendant, and when such transcript is completed, forward the same to F. D. Monckton, Clerk of the said Court of Appeals, at San Francisco, California.

The said transcript should contain the following papers and records, to wit:

1st. The indictment with all endorsements thereon.

2d. The defendant's demurrer to the indictment with endorsements.

3d. The Bill of Exceptions complete with endorsements.

4th. All minute and other journal entries, includ-

*Page-number appearing at foot of page of original certified Record.

ing the final sentence and judgment, that were made and entered of record by the clerk, during the pendency of the case.

5th. The Writ of Error and order extending time to file transcript in the Court of Appeals and Citation are original papers and must be forwarded to Mr. Monckton at San Francisco, California, along with the transcript.

LOUIS K. PRATT,
Attorney for Defendant.

Service of the above and foregoing praecipe for transcript on Writ of Error admitted by receipt of copy, this May 19th, 1916.

R. F. ROTH,
By H. E. PRATT,
United States District Attorney. [2]

*In the District Court for the Territory of Alaska,
Fourth Judicial Division.*

NO. 722—CR.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

J. P. ROSE,

Defendant.

Indictment.

J. P. Rose is accused by the Grand Jury of the Territory of Alaska, Fourth Judicial Division, convened at Fairbanks for the regular February, 1916, term of the District Court by this indictment of the crime of rape, committed as follows, to wit:

That the said J. P. Rose on the first day of June, one thousand nine hundred and thirteen, at Fairbanks in the Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, and within the jurisdiction of this Court, did then and there, wilfully, unlawfully and feloniously carnally know and abuse one Grace Carey, a female child, then under the age of sixteen years, to wit, of the age of twelve years, he, the said J. P. Rose, then and there being a male person over the age of twenty-one years; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Dated at Fairbanks, in the Division and Territory aforesaid this 1st day of March, 1916.

R. F. ROTH,
United States Attorney.

A true bill.

J. P. NORRIS,
Foreman.

The following are the names of the witnesses examined before the Grand Jury on the finding of the foregoing indictment:

GRACE CAREY,
LAURA HERINGTON.

[Endorsed]: No. 722 Cr. In the District Court, Ter. of Alaska, 4th Judicial Division. United States of America vs. J. P. Rose. Indictment Crime of Rape. A True Bill. J. P. Norris, Foreman Grand Jury. Secret. Without Bail, Charles E. Bunnell, District Judge. Presented to the Court by the foreman of the Grand Jury in open Court in the presence

of the Grand Jury and filed in the District Court, Territory of Alaska, Fourth Division. Fairbanks, Alaska. Mar. 2, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [3]

[Title of Court and Cause.]

Order for Bench Warrant.

The United States Grand Jury having on this 2d day of March, 1916, returned an indictment against the defendant named therein for the crime charged in said indictment, now, on application of the United States Attorney made in open court,

It is ordered that the clerk of this court may issue a bench warrant directed to the United States Marshal for the defendant named in said indictment, said defendant not to be admitted to bail.

CHARLES E. BUNNELL,

District Judge. [4]

[Title of Court and Cause.]

Arraignment.

Now, at this time, R. F. Roth, United States Attorney, Harry E. Pratt, Assistant United States Attorney and Reed W. Heilig, Assistant United States Attorney, appearing in behalf of the Government, and defendant appearing in person in custody of the United States Marshal, with his attorney, Louis K. Pratt, and said defendant, being brought to the bar of the Court, and being asked if he is indicted by his true name and answering that he is, the said indictment was read to the defendant and a true

copy thereof including a list of the witnesses appearing before the Grand Jury for the purpose of this indictment, duly delivered to him.

CHARLES E. BUNNELL,
District Judge. [5]

[Title of Court and Cause.]

Order Denying Motion for Admission of Defendant to Bail.

Now, at this time, Harry E. Pratt and Reed W. Heilig, Assistant United States Attorneys, appearing in behalf of the Government and defendant appearing in person, in the custody of the United States Marshal and with his attorney, Louis K. Pratt, Esq., counsel for defendant herein now moves the Court that said defendant be admitted to bail, and argument having been had by respective counsel and the Court having considered said motion,

It is ordered that said motion be, and the same is, hereby denied.

(Clerk's note: Defendant notes an exception to above ruling, which exception is allowed.)

CHARLES E. BUNNELL,
District Judge. [6]

[Title of Court and Cause.]

Order Setting Time to Plead.

Now, at this time, Harry E. Pratt and Reed W. Heilig, Assistant United States Attorneys, appearing in behalf of plaintiff and defendant appearing in person and in the custody of the United States

Marshal and being represented by Louis K. Pratt, Esq.,

It is ordered that the time for defendant to enter his plea or otherwise move against the indictment herein be, and the same is hereby fixed at 2 o'clock P. M., Wednesday, March 29th, 1916.

CHARLES E. BUNNELL,
District Judge. [7]

[Title of Court and Cause.]

Demurrer.

The defendant demurs to the indictment herein, for the reasons:

I.

That the said indictment does not substantially conform to the requirements of Chapter 7 of Title 15 of the Code of Criminal Procedure, in this that the same does not contain a statement of facts constituting the supposed offense in ordinary and concise language, and in such manner as to enable a person of common understanding to know what is intended thereby, nor is it direct and certain as to what particular crime is intended to be charged, nor is the crime of statutory rape as defined by Section 1894 of the Criminal Code covered by the language used in said indictment, either in the language of the section last mentioned or by other words of similar meaning.

II.

Because the facts stated in the said indictment do not constitute a crime.

LOUIS K. PRATT,
Attorney for Defendant.

[Endorsed]: Filed Mar. 29, 1916. [8]

[Title of Court and Cause.]

Order Continuing Hearing on Demurrer.

Now, at this time, R. F. Roth, United States Attorney and Harry E. Pratt and Reed W. Heilig, Assistant United States Attorneys appearing in behalf of the Government, and defendant appearing in the custody of the United States Marshal and with his attorney, Louis K. Pratt, now, upon motion of counsel for defendant, and there being no objection.

It is ordered that the hearing on demurrer to indictment herein be, and the same is, hereby continued to 2 o'clock P. M., to-day, Thursday, March 30th, 1916.

CHARLES E. BUNNELL,
District Judge. [9]

[Title of Court and Cause.]

Order Overruling Demurrer.

Now, at this time, R. F. Roth, United States Attorney, and Harry E. Pratt, Assistant United States Attorney, appearing in behalf of the Government and defendant appearing in the custody of the United States Marshal with his attorney, Louis K.

Pratt, and defendant's demurrer to the indictment herein came on to be heard before the Court and argument was had by respective counsel herein.

Court declared recess until 3:30 o'clock P. M.

Thereafter, at 3:30 o'clock P. M., respective counsel and defendant in the custody of the United States Marshal, all being present, said hearing was continued and after argument by respective counsel, said demurrer was overruled by the Court.

(Clerk's note: Defendant excepts to above ruling, which exception is allowed.)

CHARLES E. BUNNELL,
District Judge. [10]

[Title of Court and Cause.]

Plea of Not Guilty and Order Setting for Trial.

Now, at this time, came R. F. Roth, United States Attorney and Harry E. Pratt, Assistant United States Attorney in behalf of the Government; came also the defendant in the custody of the United States Marshal, with his attorney, Louis K. Pratt, and defendant having, on a prior day of this term, been duly arraigned, was asked by the Court if he is guilty or not guilty of the crime charged against him in the indictment, namely, that of rape, to which defendant says that he is not guilty, and therefore puts himself upon the country and the United States Attorney for and in behalf of the Government, doth the same, and this cause is hereby set down for trial at 2 o'clock P. M., Friday, March 31st, 1916.

CHARLES E. BUNNELL,
District Judge [11]

[Title of Court and Cause.]

Minutes of Court—Mar. 31, 1916.

Now, at this time, this cause came on regularly for trial by jury, the defendant appearing in person in the custody of the United States Marshal and being represented by his attorney, Louis K. Pratt, Esq., and the Government being represented by R. F. Roth, United States Attorney and Harry E. Pratt and Reed W. Heilig, Assistant United States Attorneys; both parties announcing their readiness for trial, the following proceedings were had, to wit:

On the Court's own motion, the Court ordered that all persons of the general public not properly having business before the Court, be excluded from the courtroom during the trial of this cause, to which ruling, defendant notes an exception, which exception was allowed.

The members of the regular panel of petit jurors all being present and each being called and answering to his name, the clerk proceeded to draw from the trial jury-box, one at a time, the names of said members of the regular panel of petit jurors, and after said jurors were duly sworn as to their qualifications, the respective counsel proceeded to duly examine said jurors and exercise their challenges according to law.

And it appearing to the Court that the jury thus far drawn should be kept together in charge of sworn bailiffs, S. T. Kincaid and R. K. Latimer were duly sworn as bailiffs in charge of said jury whereupon, said jury were excused in charge of their sworn bail-

iffs during argument before the Court. Members of the regular [12] panel of petit jurors not yet drawn, were excused until 4 o'clock P. M.

Court declared recess until 4 o'clock P. M.

4:00 P. M.

Thereafter, at 4 o'clock P. M., the defendant in charge of the United States Marshal, and the respective counsel being present as heretofore, said trial was resumed and the following proceedings had, to wit:

Argument was continued by respective counsel herein.

At 4:40 o'clock P. M., the jury in charge of their sworn bailiffs returned into Court; also the members of the regular panel not yet drawn, and it was stipulated by respective counsel that all were present.

Respective counsel continued to examine the members of the regular panel of petit jurors and to exercise their challenges according to law.

Thereupon, the jurors in the box, having been duly admonished, were excused in charge of their sworn bailiffs until 10 o'clock A. M., Saturday, April 1st, 1916. Members of the regular panel of petit jurors not yet drawn were excused until 10 o'clock A. M., Saturday, April 1st, 1916.

CHARLES E. BUNNELL,
District Judge. [13]

[Title of Court and Cause.]

**Order to Supply Jurymen and Bailiffs With Meals
and Lodgings.**

Now, on this day, to wit, March 31st, 1916, it

appearing to the Court that it is necessary that the jury, now in process of formation or having under consideration the law and the evidence as given to them on the trial of the above-mentioned cause should be kept together and free from communication or association with other persons, and in constant charge of two officers of the Court, duly sworn;

IT IS NOW THEREFORE ORDERED that the said jury be assigned to the custody of two duly sworn bailiffs, and that the U. S. Marshal for this Division and Territory provide the said jury and bailiffs with meals and lodgings at the expense of the United States, until such time as the jurymen have agreed upon their verdict or have been discharged by the Court.

CHARLES E. BUNNELL,
District Judge.

Entered in Court Journal No. 13 Page 485.

[Endorsed]: Filed Mar. 31, 1916. [14]

[Title of Court and Cause.]

Minutes of Trial—Apr. 1, 1916.

Now, at this time, came R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney in behalf of the government; came also the defendant in the custody of the United States Marshal and with his attorney, Louis K. Pratt, Esq;—came also the jurors in the box, in charge of their sworn bailiffs and the remaining members of the regular panel of petit jurors, whereupon the following proceedings were had, to wit:

Respective counsel continued to examine the members of the regular panel of petit jurors and to exercise their challenges according to law.

Whereupon, the members of the regular panel in the box were excused in charge of their sworn bailiffs after having been duly admonished by the Court, until 2 o'clock P. M. The remaining members of the regular panel of petit jurors were excused until 2 o'clock P. M.

Court declared recess until 2 o'clock P. M.
2:00 P. M.

Thereafter, at 2 o'clock P. M. came the defendant in the custody of the United States Marshal, with his attorney, Louis K. Pratt; came also R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney in behalf of the Government; came also the jurors in the box in charge of their sworn bailiffs and the remaining members of the regular panel of petit jurors except those previously excused for cause in this case, and being called [15] and each answering to his name as present, said trial was resumed and the following proceedings had, to wit:

Respective counsel continued to examine said jurors and to exercise their challenges according to law.

And it appearing to the Court that the regular panel of petit jurors is exhausted and that the jury is incomplete, it is hereby ordered that the clerk of this court issue a writ of special venire directed to the United States Marshal of this Division and Territory commanding him to summons from the

body of the District ten (10) men qualified to sit as jurors in this court said special venire returnable at 7:30 o'clock this day.

Hereupon, the members of the jury thus far qualified having been duly admonished by the Court were excused in charge of their sworn bailiffs, during argument by counsel for defendant for the appointment of a special officer to serve said special venire and after hearing the argument of respective counsel and the court having considered said motion, it is hereby denied, to which ruling defendant notes an exception, which exception is allowed.

And now, the jury having returned into Court in charge of their sworn bailiffs after having been duly admonished by the Court, were excused in charge of their sworn bailiffs until 7:30 o'clock P. M.

Court declared recess until 7:30 o'clock P. M.

7:30 P. M.

Thereafter, at 7:30 o'clock P. M. came the defendant in the custody of the United States Marshal with his attorney, Louis K. Pratt, Esq: came also R. F. Roth, United States Attorney and Harry E. Pratt, Assistant United States Attorney in behalf of the Government; came also the jurors in the box, in charge of their sworn bailiffs, and the remaining members of the regular panel of petit jurors except those previously excused for cause and being called, [16] each answered to his name as present, whereupon said trial was resumed and the following proceedings had, to wit:

The Marshal returned into Court the special venire heretofore issued and the members thereof, to wit: C. L. Carlson; E. C. Heacock; W. S. Reese; J. H. Sanford; H. D. Marsh; Allen A. Johnson; Murray Smith; P. A. Hennings; Oscar Sampson and J. H. Groves upon being called, each answered to his name as present; whereupon the clerk proceeded to draw from the trial jury-box, one at a time, the names of the members of said special venire and the *repsceive* attorneys exercised their challenges and examined the jurors so drawn until each side was satisfied with the jury and the jury was complete and consisted of the following persons, to wit:

Robert Moore,	L. Enstrom,
R. J. Patterson,	S. R. Bredlie,
F. G. Holmberg,	E. J. Stier,
T. T. Swan,	Geo. Knapp,
C. L. Carlson,	W. S. Reese,
P. A. Hennings,	E. C. Heacock,

which said jury was duly sworn to try the issues in said cause;

Hereupon, said jury was duly admonished by the Court and excused in charge of sworn bailiffs to report at 10 o'clock A. M. Monday, April 3d, 1916.

CHARLES E. BUNNELL,
District Judge. [17]

[Title of Court and Cause.]

Motion for Appointment of Elisor.

The defendant moves the Court for an order appointing an Elisor to serve the venire for tales-

men to complete the jury in this case, for the reason that L. T. Erwin, Marshal of said Division and all of his deputies present at Fairbanks, other than Mae Peterson, stenographer, and M. O. Carlson, office deputy, by reason of their bias and prejudice against him, are disqualified from executing the said venire, by selecting and serving the same upon the said talesmen.

This motion will be supported by the affidavit of J. P. Rose and the records and files in the Wooldridge, Jones and Callahan cases now pending or lately tried in this Court, and the records and files in the case of the United States of America vs. J. P. Rose in the Commissioner's Court at Fairbanks.

LOUIS K. PRATT,
Attorney for Defendant.

Service of the foregoing motion, by copy thereof, admitted this 1st day of April, 1916.

R. F. ROTH,
United States Attorney.

[Endorsed]: Filed Apr. 1, 1916. [18]

[Title of Court and Cause.]

Affidavit of J. P. Rose.

United States of America,
Territory of Alaska,—ss.

J. P. Rose, being first duly sworn, upon his oath deposes and says: That he is the defendant in the above-entitled action;

That heretofore and on the evening of February

15, 1916, while this defendant was lying upon his bed reading, in his room in the rear of his shop on Lacey Street, in the town of Fairbanks, J. H. Miller, George Berg and John C. Wood, then and now deputy marshals under the said L. T. Erwin, Marshal of the said division, surreptitiously placed themselves in a hallway next to the said bedroom, and one of them, to wit, the said George Berg, made an opening with his knife so that he could or claimed that he could, see through the partition into the said bedroom where this defendant was lying on his bed, and after making such preparations, all three of said deputies, and especially the said George Berg, watched this defendant for about fifteen minutes, according to the testimony of the latter; that during said time W. H. Wooldridge came into defendant's shop and passed through to the bedroom where defendant was and engaged in conversation with him; that shortly thereafter Laura Herington, a half-breed Indian girl, came through the said shop and to the entrance of said sleeping-room; that while this was taking place in the shop, F. B. Hall and P. McMullen, also then and now deputy marshals under the said L. T. Erwin, were watching the front of said shop; that a few minutes after the girl came into said shop, some of the deputies came in and spoke to the said defendant about the said occurrence, and others of said deputies [19] intercepted the said W. H. Wooldridge after he had left and had started for his home, and requested both to go to the Marshal's office, which request was complied with; that after arriving at the said office, and

when all of the deputies above named were present in a room, defendant was requested by said deputy marshal, J. H. Miller, who was then and there the Chief Deputy, to make a statement concerning the transactions at his shop on that evening, which he thereupon did, which said statement was taken down in writing by the said J. H. Miller and signed by this defendant; that at the time of signing said statement, defendant did not have his glasses with him and was unable to read it, and the same was read over to him by some one of the deputies, but either was not read correctly or defendant did not understand it correctly; that the said writing contained several erroneous statements and made this defendant say things that he did not say and which were not true, and that the said statements reflected upon the said W. H. Wooldridge and tended to incriminate him with reference to the said Laura Herington, and especially so in one particular where the said written statement makes this defendant say "that the said Wooldridge had told defendant, or gave him to understand, in his room on the evening in question, that he, Wooldridge, wanted to or intended to have sexual intercourse with the said Laura Herington"; that afterwards the said W. H. Wooldridge was indicted for the crime of statutory rape at a cabin in Fairbanks, and attempt to commit statutory rape upon the said Laura Herington at defendant's shop on the said evening; that a trial upon the said indictment took place in this Court commencing on the 6th day of March, 1916, during which defendant was a witness on behalf of the Gov-

ernment and gave testimony favorable to defendant and denied at that time, under oath, that the said Wooldridge had told him or given him to understand, in his bedroom or shop on the evening in question, "that he, Wooldridge, wanted to or expected to have sexual intercourse with the said Laura Herington"; [20] that at said trial all of the said deputies, except John C. Wood and P. McMullen, were witnesses on behalf of the Government; that the said deputy George Berg, in his testimony, disputed the evidence of defendant with reference to the conversation between the said Wooldridge and himself on the said occasion, and testified that from his position in the said hall, by looking through the slit or hole in the partition, he could see this defendant and the said Wooldridge, could hear a part at least of their conversation, and that said Wooldridge had at that time told this defendant in substance that he expected or wanted to have sexual intercourse with the said Laura Herington; that prior to the delivery of the said testimony by him in the trial of the said W. H. Wooldridge, this defendant was indicted by the Grand Jury of the crime of statutory rape, as shown by the indictments herein; that after he had given said evidence in the Wooldridge case, the said Marshal and his said deputies were much incensed against him, by reason thereof, and thereafter a complaint was sworn to by R. F. Roth, United States Attorney, and filed in the office of the Commissioner at Fairbanks, charging him with the crime of perjury, the same being based upon his evidence in regard to what Wooldridge had said to

him in *in* his room on the evening of February 15, 1916; that at his preliminary examination before J. K. Brown, Commissioner, at Fairbanks, held on the 28th day of March, 1916, the said George Berg was the principal witness for the Government and again related what he claimed to have seen and heard on the evening of February 15, 1916; that as the result of such testimony and other evidence, this defendant was bound over to the grand jury by the said Commissioner to answer to the charge of perjury, his bond being fixed at two thousand dollars (\$2,000.00).

That at about the time the said W. H. Wooldridge was indicted by the grand jury, indictments were returned against Robert [21] Jones and Daniel Callahan, charging each of them with the crime of statutory rape, in the case of Jones as against the girl, Laura Herington, and in Callahan's case as against one Grace Carey; that after the termination of the Wooldridge trial, said Jones was tried by a jury and later said Callahan was tried; that in selecting the special venire at the trial of the said Robert Jones, wherein four talesmen were ordered, the said Marshal, through his deputies, selected four, two of whom were Wallace Cathcart and T. A. Parsons. That in the Callahan trial a venire for eight talesmen was ordered, who were selected by the said Marshal and his deputies, and the said Wallace Cathcart and T. A. Parsons were again served as talesmen, and one of them, viz., Wallace Cathcart, was chosen as a jurymen and sat at the trial of the said Callahan and voted for conviction throughout

the deliberations of the said jury, such deliberations finally resulting in a verdict of guilty.

That it is common talk in the town of Fairbanks, and generally believed, and this defendant believes, that the said Marshal and his said deputies, in selecting the two lists of talesmen in the said cases of Jones and Callahan, endeavored at least to select men inclined to find a verdict of guilty; that defendant avers and believes that if said Marshal and his deputies, other than the said stenographer and office deputy, are allowed to serve the special venire herein, they will discriminate against him and so far as lay in their power, will select talesmen likely to be prejudiced against him, and ready and willing to agree upon a verdict of guilty upon any sort of a showing made by the Government, whether the same is sufficient to establish his guilt beyond a reasonable doubt or not.

That with reference to deputy marshal M. O. Carlson, defendant has no criticisms to make other than that, under the circumstances, he could not and would not be a fair and impartial officer to select talesmen, for the reason that his position under the Marshal would prevent him from acting on his own judgment and in an independent [22] manner.

J. P. ROSE.

Subscribed and sworn to before me this 1st day of April, 1916.

J. E. CLARK,
Clerk.

By Sidney Stewart,
Deputy.

Service of the foregoing affidavit, by copy thereof, admitted this 1st day of April, 1916.

R. F. ROTH,
United States Attorney.

[Endorsed]: Filed Apr. 1, 1916. [23]

[Title of Court and Cause.]

Minutes of Trial—Apr. 3, 1916.

Now, at this time, came R. F. Roth, United States Attorney, and Reed W. Heilig, Assistant United States Attorney in behalf of the Government; came also the defendant, in the custody of the United States Marshal with his attorney, Louis K. Pratt; came also the jurors heretofore sworn to try the issues in the above-entitled cause, in charge of their sworn bailiffs, and being called and each answering to his name as present, said trial was resumed and the following proceedings had, to wit:

Opening statement was made by R. F. Roth, United States Attorney, in behalf of the Government, followed by statement by Louis K. Pratt, Esq., in behalf of the defendant.

Grace Carey was duly sworn and testified in behalf of the Government.

At 10:50 o'clock A. M., the jury having been duly admonished retired in charge of their sworn bailiffs, during argument before the Court.

At 11:25 A. M., the jury returned into Court, in charge of their sworn bailiffs, and it was stipulated by respective attorneys that all were present.

Grace Carey resumed the stand and testified in behalf of the Government.

At 11:50 o'clock A. M., the jury having been duly admonished were excused in charge of their sworn bailiffs, until 1:45 o'clock P. M. [24]

Court declared recess until 1:45 o'clock P. M.

1:45 P. M.

Hereafter, at 1:45 o'clock P. M., said trial was resumed, R. F. Roth, U. S. Attorney, Harry E. Pratt and Reed W. Heilig, Assistant United States Attorneys appearing in behalf of the Government and the defendant appearing in the custody of the United States Marshal with his attorney, Louis K. Pratt; came also the jurors heretofore sworn to try the issues in the above-entitled cause, in charge of their sworn bailiffs, whereupon the following proceedings were had, to wit:

Grace Carey resumed the stand and testified further in behalf of the Government.

J. J. Buckley, Laura Herington and James J. Fairborn were each duly sworn and testified in behalf of the Government.

Marion Carey was duly sworn and testified in behalf of the Government.

Government rests.

At 2:16 o'clock P. M., the jury having been duly admonished, retired in charge of their sworn bailiffs during argument of defendant's motion for an instructed verdict, which motion was denied by the Court, to which ruling, defendant notes an exception, which exception is allowed.

Hereupon the jury returned into Court in charge of their sworn bailiffs and it was stipulated by respective counsel that all were present.

J. P. Rose, defendant herein, was duly sworn, and testified in his own behalf.

At 2:55 o'clock P. M., the jury having been duly admonished were excused in charge of their sworn bailiffs.

Court declared recess until 3:10 o'clock P. M.

3:10 P. M.

At 3:10 o'clock P. M., came respective parties and counsel as heretofore; came also the defendant in the custody of the United [25] States Marshal; came likewise the jury heretofore sworn to try the issues in the above-entitled cause in charge of their sworn bailiffs, and it was stipulated by respective parties that all were present, whereupon the following proceedings were had, to wit:

J. P. Rose, resumed the stand and testified in his own behalf.

J. J. Patton was duly sworn and testified in behalf of defendant.

At 3:40 o'clock P. M., the jury, having been duly admonished, retired in charge of their sworn bailiffs, during argument relative to the introduction of certain testimony of J. J. Patton to which plaintiff objects.

At 4:10 o'clock P. M., the jury having returned into Court, in charge of their sworn bailiffs and it having been stipulated by respective counsel that all were present, said trial was resumed.

Plaintiff's objection to the introduction of certain testimony sustained, to which ruling defendant notes an exception, which exception is allowed.

Hereupon, the jury having been duly admonished, were excused in charge of the sworn bailiffs until 10 o'clock A. M., Tuesday, April 4th, 1916.

CHARLES E. BUNNELL,
District Judge. [26]

[Title of Court and Cause.]

Minutes of Trial—Apr. 4, 1916.

Now, at this time, came R. F. Roth, United States Attorney, and Reed W. Heilig, Assistant United States Attorney in behalf of the Government; came also the defendant, in the custody of the United States Marshal with his attorney, Louis K. Pratt, Esq.; came likewise the jury heretofore sworn to try the issues in the above-entitled cause, in charge of their sworn bailiffs, and being called and each answering to his name as present, said trial was resumed and the following proceedings had, to wit:

Andrew Anderson was duly sworn and testified in behalf of defendant.

At 10:10 o'clock A. M., the jury, having been duly admonished, retired in charge of their sworn bailiffs during argument as to the admission of certain testimony. Hereupon, objection of the Government having been withdrawn, the jury returned in charge of their sworn bailiffs and it was stipulated by respective attorneys that all were present.

Andrew Anderson resumed the stand and testified further in behalf of defendant.

F. Bishoprick, Wm. H. McPhee and Thomas Keel

were each duly sworn and testified in behalf of defendant.

Defendant rests.

F. B. Hall and J. H. Miller, Deputy United States Marshals were each duly sworn and testified in behalf of plaintiff.

Plaintiff rests. Defendant rests. [27]

At 11:06 o'clock A. M., opening argument was made by F. R. Roth, United States Attorney.

Hereupon, the jury having been duly admonished, were excused in charge of their sworn bailiffs until 2 o'clock P. M.

Court declared recess until 2 o'clock P. M.
2:00 P. M.

Thereafter, at 2 o'clock P. M., came R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney in behalf of the Government; came also the defendant in the custody of the United States Marshal with his attorney, Louis K. Pratt; came likewise the jury heretofore sworn to try the issues in the above-entitled cause in charge of their sworn bailiffs, and being called, each answered to his name as present, whereupon, said trial was resumed and the following proceedings had, to wit:

Argument was made by Louis K. Pratt, Esq., in behalf of the defendant.

Hereupon, the jury having been duly admonished, were excused in charge of their sworn bailiffs until 3:40 o'clock P. M.

Court declared recess until 3:40 o'clock P. M.

3:40 P. M.

Thereafter, at 3:40 o'clock P. M., came the defendant in the custody of the United States Marshal; came also the jury, heretofore sworn, in charge of their sworn bailiffs and being called, each answered to his name as present; came likewise the respective parties and attorneys as heretofore, whereupon the following proceedings were had, to wit:

Closing argument was made by R. F. Roth, United States Attorney.

Thereafter the Court proceeded to read its instructions to the jury as to the law in the case and R. K. Latimer and S. T. Kincaid having been sworn as bailiffs in charge of said jury, at 5:30 o'clock P. M., the jury retired in charge of their sworn bailiffs to deliberate upon their verdict.

Court adjourned until 10 o'clock A. M., Wednesday, April 5th, 1916, subject to receiving the verdict of the jury now deliberating. 11:02 P. M.

11:02 P. M.

Thereafter, at 11:02 P. M., came R. F. Roth, United States Attorney [28] and Reed W. Heilig, Assistant United States Attorney in behalf of the Government; came also the defendant in the custody of the United States Marshal with his attorney, Louis K. Pratt, Esq., came likewise the jury heretofore sworn to try the issues in the above-entitled cause, in charge of their sworn bailiffs, and being called and each answering to his name as present, said jury did present, by and through their foreman, in open Court, their verdict which is in words and figures following, to wit:

“[Title of Court and Cause].

VERDICT.

We, the jury in the above-entitled action, duly impaneled and sworn, find the defendant, J. P. Rose, guilty of the crime of rape as charged in the indictment.

Dated April 4, 1916.

GEO. W. KNAPP,
Foreman.”

which said verdict was received by the Court and ordered filed with the clerk of the Court and the jury excused from further deliberation in this cause. Members of the regular panel of petit jurors to report at 10 o'clock A. M., Wednesday, April 5th, 1916.

CHARLES E. BUNNELL,
District Judge, [29]

[Title of Court and Cause.]

Verdict.

We, the jury in the above-entitled action, duly empaneled and sworn, find the defendant, J. P. Rose, guilty of the crime of rape as charged in the indictment.

Dated: April 4, 1916.

GEO. W. KNAPP,
Foreman.

Entered in Court Journal No. 13, Page 491.

[Endorsed]: Filed Apr. 4, 1916. [30]

[Title of Court and Cause.]

Minutes of Court—Apr. 8, 1916.

Now, at this time, came Reed W. Heilig, Assistant United States Attorney in behalf of the Government; came also the defendant in the custody of the United States Marshal and with his attorney, Louis K. Pratt, and

It is hereby ordered that the defendant's motion for a new trial in this cause be, and the same hereby is, fixed for hearing at 7:30 o'clock P. M., Tuesday, April 11th, 1916.

CHARLES E. BUNNELL,
District Judge. [31]

[Title of Court and Cause.]

Minutes of Court—Apr. 11, 1916.

Now, at this time, R. F. Roth, United States Attorney and Harry E. Pratt, Assistant United States Attorney, appearing in behalf of the Government; came also the defendant in the custody of the United States Marshal and with his attorney, Louis K. Pratt, and defendant's motion for a new trial in this cause having previously been set for hearing at this time, now,

It is ordered that said hearing on defendant's motion for a new trial in this cause be, and the same hereby is, reset to 10 o'clock A. M., Wednesday, April 12th, 1916.

CHARLES E. BUNNELL,
District Judge. [32]

[Title of Court and Cause.]

Minutes of Court—Apr. 12, 1916.

Now, at this time, came R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney, in behalf of the Government; came also the defendant in the custody of the United States Marshal with his attorney, Louis K. Pratt, Esq., defendant's motion for a new trial herein coming on regularly to be heard before the Court and after argument by counsel for defendant, the matter was continued to 2 o'clock P. M., this day.

CHARLES E. BUNNELL,
District Judge. [33]

[Title of Court and Cause.]

Minutes of Court—Apr. 12, 1916.

Now, at this time, came R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney, in behalf of the Government; came also the defendant in the custody of the United States Marshal with his attorney, Louis K. Pratt, Esq., and hearing on defendant's motion for a new trial was continued, and after argument, and the Court being fully advised in the premises,

It is ordered that said motion for a new trial herein be, and the same hereby is, denied, and defendant was remanded to the custody of the United States Marshal to await sentence.

CHARLES E. BUNNELL,
District Judge. [34]

[Title of Court and Cause.]

Minutes of Court—Apr. 12, 1916.

Now, at this time, R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney, appearing in behalf of the Government, and the defendant appearing in the custody of the United States Marshal with his attorney, Louis K. Pratt,

It is ordered that the time for pronouncing judgment and sentence upon the defendant herein be, and the same hereby is, fixed at 4 o'clock P. M., Wednesday, April 12th, 1916.

CHARLES E. BUNNELL,
District Judge. [35]

*In the District Court for the Territory of Alaska,
Fourth Judicial Division.*

NO. 722—CR.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. P. ROSE,

Defendant.

Judgment.

Now, at this time, to wit, April 12, one thousand nine hundred and sixteen, the same being one of the regular February, 1916, term days of this court, this cause came on regularly for the pronouncement of the judgment and sentence of the Court upon the defendant, J. P. Rose. The defendant appeared in

person and by his attorney, Louis K. Pratt, and the United States appeared by R. F. Roth, United States Attorney, and Reed W. Heilig, Assistant United States Attorney.

It appears to the Court, and the Court so finds, that the defendant J. P. Rose, was, by a lawful and regular Grand Jury for the aforesaid division, duly and regularly indicted upon the 1st day of March, 1916, and charged with the crime of rape, alleged in said indictment to have been committed upon the 1st day of June, 1913, at Fairbanks, Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, upon Grace Carey, a female child of the age of twelve years, he, the said J. P. Rose, being a male person over the age of twenty-one years.

It further appears to the Court that the defendant was duly and regularly arraigned upon said indictment and plead not guilty thereto and that upon the 31st day of March the 1st, 3d and 4th days of April, 1916, the same having been theretofore regularly appointed as the time for the trial of this cause, a jury of twelve men was duly and regularly empaneled and sworn; evidence introduced on behalf of plaintiff and defendant; arguments of counsel had, and the jury instructed as [36] to the law of the case; and said jury, upon said 4th day of April, 1916, retired to consider its verdict and upon the same day returned the same into court, which was in words and figures as follows, to wit:

“[Title of Court and Cause.]

VERDICT.

We, the jury in the above-entitled action, duly impaneled and sworn, find the defendant, J. P. Rose, guilty of the crime of rape as charged in the indictment.

Dated April 4, 1916.

GEO. W. KNAPP,
Foreman.”

That thereafter, defendant filed a motion for a new trial which was heard and overruled and upon this 12th day of April, 1916, the same having been heretofore regularly designated as the time for the pronouncement of the judgment and sentence of the Court, and the defendant having been asked if he has anything to say why judgment should not be pronounced upon him, and he having replied in the negative, and the Court being fully advised in the premises,

IT IS ADJUDGED that the defendant, J. P. Rose, is guilty of the crime of rape as charged in said indictment and in accordance with the aforesaid verdict, and it is the judgment and sentence of the Court that the defendant, J. P. Rose, shall be imprisoned in the United States penitentiary at McNeil's Island, County of Pierce, State of Washington, for a period of eight years, and the United States Marshal is ordered to deliver said defendant to said penitentiary for the execution of this sentence.

Dated at Fairbanks, Alaska, this 12th day of April, 1916.

CHARLES E. BUNNELL,
District Judge.

Entered in Court Journal No. 13, page 509.

[Endorsed]: No. 722-CR. In the District Court of the United States for the Territory of Alaska. United States of America vs. J. P. Rose. Judgment. Filed in the District Court, Territory of Alaska, 4th Div., Apr. 12, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [37]

[Title of Court and Cause.]

Minutes of Court, April 12, 1916.

Now, at this time, came R. F. Roth, United States Attorney, and Harry E. Pratt, Assistant United States Attorney, in behalf of the Government; came also the defendant in the custody of the United States Marshal with his attorney, Louis K. Pratt, Esq., upon oral motion of counsel for defendant that the time be fixed within which defendant may make, serve and tender his Bill of Exceptions herein, and there being no objection,

It is ordered that counsel for defendant may have until August 1st, 1916, within which to make, serve and tender his Bill of Exceptions herein.

CHARLES E. BUNNELL,
District Judge. [38]

[Title of Court and Cause.]

Bill of Exceptions.

BE IT REMEMBERED that this case came on regularly for trial in the above-entitled court at 10 o'clock A. M. on Friday, March 31, 1916, Honorable Charles E. Bunnell, Judge of said court, presiding. United States Attorney R. F. Roth appeared on behalf of the Government, and Louis K. Pratt appeared as attorney for the defendant. The defendant was present at all times during the trial and proceedings in the case, and the jury, during all recesses and continuances, were kept together in charge of bailiffs in that behalf sworn. Proceedings were regularly taken to impanel a jury, and a jury of twelve men were duly impaneled and sworn to try the case, at the evening session of court on April 1, 1916, whereupon the trial was continued until 10 A. M. Monday, April 3, 1916.

At 10 o'clock A. M. April 3, 1916, after opening statements made by R. F. Roth, Esq., on behalf of the Government, and by Louis K. Pratt, Esq., on behalf of the defendant, the following proceedings were had and testimony was taken: [39]

Testimony of Grace Carey, for Plaintiff.

GRACE CAREY, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. What is your name? A. Grace Carey.

Q. Where do you live?

(Testimony of Grace Carey.)

A. Fourth and Barnette.

Q. How old are you? A. Fifteen.

Q. When was your birthday?

A. 23d of March.

Q. Are you acquainted with J. P. Rose, the defendant? A. Yes.

Q. How long have you known him?

A. I don't know. Ever since I can remember.

Q. Do you know what business he has?

A. Yes.

Q. What is his business?

A. He repairs bicycles and things like that.

Q. A repair shop? A. Yes.

Q. Have you gone to school in Fairbanks?

A. Yes.

Q. How long?

A. About five years, five and a half. About five or five and a half years.

Q. What grade were you in when you quit school?

A. The sixth.

Q. Did you know two girls, one by the name of Vera Kelley and [40] the other, Grace Kelley.

A. No. Vera and Agnes Kelley.

Q. Now, with reference to the time, do you remember when they left the town of Fairbanks—the Kelley girls, I mean?

A. About two years ago last summer.

Q. Now, while they were here in town during that summer, did you go to the bicycle shop of this defendant? A. Yes, I did.

Q. Just tell this jury what occurred between you

(Testimony of Grace Carey.)

and this defendant in his shop the time when the Kelley girls were here two years ago last summer.

A. I had sexual intercourse with him.

Mr. PRATT.—Wait a minute. What time are you talking about now?

Mr. ROTH.—I will fix the time now. I fix it about three weeks before the time the Kelley girls left here.

Q. About how long was this before the time that the Kelley girls left here that you say you had sexual intercourse with Rose in his— (Interrupted.)

(Defendant states that that assumes something she has not testified to, and moves to strike the last answer. Motion denied. Defendant excepts. Exception allowed.)

Q. How long was it before the Kelley girls left here? A. About three weeks.

Q. Where did this act of sexual intercourse take place? A. In the shop of Mr. Rose.

Q. What part of the shop?

A. In the back part where he lived.

Q. What was in that back part there?

A. I can't tell everything that was in it.

Q. But some of the general things. What did he have in there? [41]

A. He had a stove and a table and a bed.

Q. All right. That is all I care for now. What part of that back room was it that this act of sexual intercourse took place? Was it on the bed?

A. Yes.

Q. How were you lying on the bed?

(Testimony of Grace Carey.)

(Defendant asks that the time be fixed. Plaintiff's attorney states that he cannot fix the time at once, but will prove the exact time that the Kelley girls left.)

Q. How were you lying on the bed? Do you understand my question? At the time that this act of sexual intercourse took place, how were you lying?

A. On my back.

Q. And how was the defendant lying?

A. On top of me.

Q. Had you removed any of your clothing?

A. No.

Q. What did you do, if anything, with reference to your clothing?

A. I unfastened my underdrawers.

Q. Did Mr. Rose remove any of his clothing?

A. No.

Q. What did he do with reference to his clothing, if anything? A. Opened the front of his clothing.

Q. Was this in the daytime or the night-time or the evening? A. It was in the daytime.

Q. What was done, if anything, by Mr. Rose before he committed this act of sexual intercourse?

A. Locked the door of the shop.

Q. What did he say to you at that time, if you remember? [42]

A. He told me he had done this with some other girls, friends of mine.

Q. Did he say anything else to you that you remember on the subject of your telling, or anything like that?

(Testimony of Grace Carey.)

A. Yes. He told me if they would ever get me up any place and ask me if he had ever had sex—if he had done anything like this to me, to say no. He said, no matter if you do say no, that they couldn't prove it, and would have to take my word for it.

Q. Was that the first time he had ever had sexual intercourse with you?

A. No. He had once before.

Q. How long before that?

A. About a week or two.

Mr. PRATT.—I move to strike that out. The indictment says this occurred about the first of June, and other acts would have to be prior to that. Apparently, now, from Mr. Roth's statement, the Government is going to rely on an act of sexual intercourse about the 4th of July. (Argument. Motion denied.)

Mr. ROTH.—Q. And where did that act of sexual intercourse take place, you say the one before this time? A. At his shop.

Q. At the same place? A. Yes.

Q. How was that bed fixed or placed? Was that bed so that it could be seen from the street, from the window? A. No.

Q. Why couldn't you see it from the street through the window?

A. Because there was a partition between the two rooms. [43]

Q. Now, before the time that you had sexual intercourse with this defendant as you have stated

(Testimony of Grace Carey.)

here, had you been to Mr. Rose's shop?

A. Yes. Lots of times.

Q. What did you go there for?

A. To get a bicycle.

Q. Would you get it? A. Yes.

Q. Did you get a bicycle from him many times?

A. Yes.

Q. Would you get anything else there?

A. He would give us candy, oranges and apples, and money.

A. And money? A. Yes. Bingles.

Q. Were you and he always friendly before that, good friends? A. Yes.

Q. Did you ever have any difficulty of any kind with him before that? A. No.

Q. State whether or not you had often gone back into his living-room or bedroom before this act of sexual intercourse.

A. Why, yes, I went back there a few times, but he wouldn't always be back there.

Q. Were you always made welcome there?

A. Yes.

Q. Has he tried to have sexual intercourse with you since that time?

(Defendant objects to anything subsequent. Sustained.) [44]

Q. Did he hurt you when he had sexual intercourse with you? A. Yes.

Q. How does it come that you didn't have sexual intercourse with him more than you did have? (Objection. Sustained.)

(Testimony of Grace Carey.)

Q. This summer—I mean this winter, just after the Grand Jury convened here, were you in Mr. Rose's place of business in this town? A. Yes.

Q. Who was with you? A. Laura Herrington.

Q. What did Mr. Rose say to you at that time?

A. He told me— (Interrupted.)

(Defendant objects as irrelevant, incompetent, immaterial. Nothing to show that it has any materiality. Objection overruled.)

Q. What did he tell you?

A. He said: "You girls better be careful, because the Grand Jury is in session now."

Q. There is one thing I want to ask you: Were you ever married? A. No.

Q. And this defendant is not your husband?

A. No.

Mr. ROTH.—You may cross-examine the witness.

Cross-examination.

(By Mr. PRATT.)

Q. Grace, isn't this about what Mr. Rose told you and Laura? He knew both of you well, didn't he, at that time when the Grand Jury was in session you talked with him? A. Yes.

Q. He knew you both for a number of years, didn't he? [45] A. Yes.

Q. Didn't he tell you, in effect, that you and Laura had better be careful how you sported around with men during the session of the Grand Jury; that you would get into trouble? Aint that about what he said? A. No. He didn't.

Q. He didn't? A. No.

(Testimony of Grace Carey.)

Q. What do you say he did say?

A. He said: "You girls had better be careful, because the Grand Jury is in session."

Q. Didn't you know what that meant?

A. Well, I thought he meant us to be careful for him.

Q. Be careful of him? A. For him.

Q. For him? A. Yes.

Q. He didn't say so, though, did he? A. No.

Q. And you didn't think he had in mind, now, that you had better be careful about sporting with other men; that you would get yourselves in trouble. You didn't put that construction on it, did you?

A. No.

Q. No. Where were you born, Grace?

A. In Circle City, Alaska.

Q. What year? A. 1901.

Q. What month and day?

A. The 23d day of March.

Q. Do you know how old you were when you were brought over here to Fairbanks? [46]

A. No. I don't.

Q. Do you know what year it was?

A. No. I don't.

Q. You have lived here about as long as you can remember back, haven't you? A. Yes.

Q. Grace, now you have told the jury that you were fifteen years old the 23d day of March, haven't you? A. Yes.

Q. Of this year? A. Yes.

Q. Now, you took a trip on the boats this last

(Testimony of Grace Carey.)

summer, 1915, didn't you, to Iditarod? (Objected to. Overruled.) A. Yes.

Q. What boat did you go down on?

A. On the "Tanana" and then on the "Washburn."

Q. How far did you go on the "Tanana"?

A. To Holy Cross.

Q. There you took the "Washburn."

A. From Holy Cross to this side of Dikeman; then we got on the "Prairie Belle" to Dikeman.

Q. "Prairie Belle" at Dikeman.

A. To Dikeman. I came back and took the "Washburn."

Q. You didn't stay there. You turned right around and came back?

A. I did not. I stayed in Dikeman a while with my sister; then I went up to Iditarod and stayed awhile there.

Q. And when you came back you took the "Washburn" again. A. To Tanana. Yes, sir.

Q. To where? A. To Tanana. [47]

Q. You took the "Washburn" at Tanana?

A. To Tanana.

Q. How many days were you on the "Washburn," altogether? A. I don't remember.

Q. Well, it was ten or twelve days, wasn't it?

A. No.

Q. Going up and coming back?

A. I only went on the "Wishburn" from Dikeman to Tanana. I didn't come back later.

(Testimony of Grace Carey.)

Q. You went on the "Washburn" from Holy Cross to Dikeman?

A. Yes. Then the "Washburn" came back to Holy Cross, and I stayed at Dikeman and I was up at Iditarod in the meantime.

Q. When did you get on the "Washburn" again?

A. The "Washburn" came back to Dikeman.

Q. So that you were on the "Washburn" altogether about ten or twelve days or more?

A. Not all at one time, though.

Q. I know, but altogether.

A. I don't know.

Q. You got pretty well acquainted on that boat, didn't you?

(Objection—Overruled.)

Q. You got pretty well acquainted on that boat with the purser and officers, and the cabin boys and cooks and waiters, didn't you? A. Yes.

Q. Grace, do you remember the name of the purser? A. Yes, sir.

Q. What is his name? A. Chester. [48]

Q. Chester H. Marshall. Would that be his name? A. Yes.

Q. You were around him a good deal, wasn't you, talked with him a good deal? A. No. I wasn't.

Q. Didn't you, while you were on the "Washburn," go to Mr. Chester H. Marshall, the purser, and solicit him to have sexual intercourse with you, and that he told you that he had a wife on the outside, and that you were a young girl; and didn't you come right back and say to him, in order to induce

(Testimony of Grace Carey.)

him to have sexual intercourse with you, that you were then over sixteen years of age?

(Plaintiff objects as irrelevant, incompetent, immaterial and not cross-examination.)

Mr. PRATT.—She has testified here that she is fifteen years old. Now, if I can show that she told Marshall that she was 16 last summer—(Interrupted)

The COURT.—Then ask her the question if she told Mr. Marshall that she was sixteen years old last summer.

Mr. PRATT.—I have asked it.

The COURT.—Objection sustained to the question as asked.

Mr. PRATT.—Q. Didn't you, on that trip, while you were on the "Washburn," tell the purser, Mr. Marshall, that you were over sixteen years of age?

A. I did not.

Q. Grace, didn't you, while you were on that "Washburn"—didn't you have sexual intercourse generally with the cabin boys and cooks and everybody there that would have sexual intercourse with you? [49]

(Plaintiff objects as irrelevant, incompetent, immaterial and not cross-examination.)

The jury withdraw from the courtroom in charge of the bailiffs, after receiving the usual admonitions from the Court.

After argument, the jury return to the courtroom.

Objection sustained. Defendant excepts, and is allowed an exception.)

(Testimony of Grace Carey.)

Mr. PRATT.—Read the question.

Mr. ROTH.—I don't see why it is necessary to read that question, and I object to the question being read again.

The COURT.—You may read the question.
(Question read.)

Mr. PRATT.—Q. You made the trip on the "Tanana," now, from the town of Fairbanks, here, clear down to Holy Cross, didn't you? A. Yes.

Q. Then, when you got back to Gibbon, you took the "Tanana" again and came on to Fairbanks.

A. I did not. I took the "Yukon" and met the "Tanana."

Q. The "Tanana" was there?

A. The "Tanana" was not there.

Q. It wasn't. A. No.

Q. You met the "Tanana" on the river here.

A. Yes.

Q. Now, Grace, while you were making that trip on the "Tanana" from Fairbanks to Holy Cross, who was the purser?

A. I have forgotten what his name was.

Q. I will give it to you; E. P. Bemis. A. Yes.

Q. You got pretty well acquainted with him, didn't you?

A. Why, yes. I knew him a long time, anyway.

Q. You got pretty well acquainted with all the men on the upper [50] deck there, cooks, waiters and officers? A. Yes.

Q. Mr. Bemis is a rather elderly man, fifty or sixty years old, isn't he? A. I don't know his age.

(Testimony of Grace Carey.)

Q. Aint he along in age, something like that?

A. I don't know.

Q. He is not a young man, is he?

A. He may be young, for all I know.

Q. He may be young, for all you know.

A. Yes.

Q. You have seen him here in Fairbanks, haven't you? A. Yes.

Q. You saw him on that trip, and you can't say now whether he is a young or old man. Is that it?

(Plaintiff objects.)

Q. Do you know whether he is a young man or an old man. A. He is not very young. No.

Q. Grace, on that trip, somewhere along—I will ask you another question before that. Isn't it true that on that trip you would go into the purser's room—(Interrupted)

A. I was only in there once, and the door was open while I was in there.

Q. Yes. Was Mr. Bemis there?

A. Of course he was.

Q. Now, Grace, didn't you solicit Mr. Bemis to have sexual intercourse with you—Wait—(Interrupted)

A. I—(Interrupted)

Q. Wait a minute. And didn't he tell you that he had a wife on the outside and that you were a young girl; and didn't [51] you tell him: "Oh, I am over sixteen years of age. It will be all right."

A. I did not.

Q. You didn't. A. Of course I didn't.

(Testimony of Grace Carey.)

Q. Nothing of that kind happened. A. No.

Q. Didn't you say that to somebody on that boat?

A. I did not.

Q. Didn't you say that to somebody?

A. I did not.

Q. Didn't you have sexual intercourse generally on that boat? A. I did not.

Q. You didn't? A. No.

Q. With nobody? A. With nobody.

Q. Nobody at all? A. No.

Q. Well, well.

A. Dan Callahan was the last man.

Mr. ROTH.—I object to counsel making that statement to this young girl on the stand. I think that his conduct is not becoming of an officer of this court, and I think he ought to be called down for it.

The COURT.—Now, Mr. Pratt, the Court has already ruled on a question of that kind, and it ought not to be necessary for the Court to rule on the same proposition again.

Mr. PRATT.—I want to make a record. I will ask the questions and the Court can rule.

The COURT.—You may make your record right now on this proposition and the Court directs you not to ask questions of that kind [52] again.

Mr. PRATT.—No questions of that kind again?

The COURT.—Certainly not, for the Court has ruled on it.

Mr. PRATT.—This question had reference and value also in regard to her age.

The COURT.—All right. The Court has indi-

(Testimony of Grace Carey.)

cated to you that you can ask her with regard to statements made in regard to her age, and, if that is your purpose, you need not put a lot of other things in it. You understand the Court's ruling on this matter.

Mr. PRATT.—I understand the Court's ruling, but I thought I had a right to ask questions of that kind so as to make a record. I guess I better not try it. I was going to ask her a question with regard to when she was at Gibbon.

The COURT.—The Court has ruled in regard to that matter.

Mr. PRATT.—I can't ask those questions and make a record?

The COURT.—No, sir.

Mr. PRATT.—All right. I understand.

Q. Grace, you were before the Grand Jury here in February this year, wasn't you? A. Yes.

Q. How many times? A. Twice.

Q. No more than that? A. No.

Q. Who sent for you and where did you go and who did you talk to about giving testimony before the Grand Jury? A. I went to Mr. Roth.

Q. To Mr. Roth? A. Yes. [53]

Q. Did he send for you? A. Of course he did.

Q. Who did he send to get you? A. Joe Miller.

Q. Joe Miller? A. Yes,

Q. And you came up and talked to him.

A. Yes.

Q. And you told him all about all these things.

A. Yes.

(Testimony of Grace Carey.)

Q. You told him you had sexual intercourse with a great many different men here in town, didn't you?

A. I did not. I named the men.

Q. You named the men. A. Yes.

Q. Did you name all of them? A. Yes.

Q. Did you name Mr. Rose?

A. Yes, of course I did.

Q. You are sure of that, are you?

A. Yes. I am sure of it.

Q. Yes. Grace, when you first went before the Grand Jury, wasn't you asked by the Grand Jury how many men here you had had sexual intercourse with, and didn't you tell them: "I could name fifty, and there were more." A. I did not.

Q. Nothing like that? A. No.

Q. How many did you tell them that you could name?

(Plaintiff objects as irrelevant, incompetent, immaterial and not cross-examination. 'Objection sustained.)

Q. How many did you try to name—the number?
[54]

(Plaintiff objects on all the grounds last stated. Objection sustained.)

Mr. PRATT.—I want to show that she did name them, but didn't name Mr. Rose.

Mr. ROTH.—She has already stated—(Interrupted)

Mr. PRATT.—I will ask her that question. Of course, she will deny it, but that is all right.

Mr. ROTH.—I want to go on record as attorney

(Testimony of Grace Carey.)

for the Government that that statement of counsel is reprehensible.

The COURT.—The statement of counsel may be stricken from the record, and the jury instructed to entirely disregard it.

Mr. PRATT.—Q. Grace, didn't you undertake, before the Grand Jury, to give the names of the men that you had had intercourse with,—sexual intercourse with?

Mr. ROTH.—She has already answered that. She said she did.

The COURT.—The question has been answered, Mr. Pratt.

Mr. PRATT.—Q. Did you say you did?

A. Why, no.

Q. To the Grand Jury? Did you try to tell the Grand Jury the number of men that you had sexual intercourse with?

A. I didn't try, but I told them.

Q. You told them. A. Yes.

Q. Was Mr. Rose one of them?

A. Yes, of course he was.

Q. You are sure he was. A. Yes. [55]

Q. Yes? The first time you went to the Grand Jury and gave testimony, did you give testimony about this transaction with Mr. Rose that you have been telling about?

(Plaintiff objects. Overruled.)

A. I don't think I did.

Q. You don't think you did.

Mr. ROTH.—The first time he was not under in-

(Testimony of Grace Carey.)

quiry. It was another matter that was being inquired into.

Mr. PRATT.—Q. Now, Grace, how long after that was it before you went before the Grand Jury again?

A. I think it was the day after.

Q. The day after?

A. I think—(Interrupted)

Q. Wasn't you there after Mr. Wooldridge was indicted? A. I don't know what he means.

Q. You know when Mr. Wooldridge was indicted—W. H. Wooldridge. Don't you remember now the second time you went to give testimony before the Grand Jury was after Mr. Wooldridge had been indicted?

A. It was after. It had been told to the Grand Jury. Yes.

Q. Mr. Rose was a witness there in the Wooldridge case too? A. I don't know.

Q. Didn't you see him there?

A. I saw him standing downstairs.

Q. Standing downstairs. You had another conversation with Mr. Roth before you went before the Grand Jury the second time?

A. I have had lots of conversation with him. I don't know. [56]

Q. How many do you think you had?

A. I don't know.

Q. Talked all about these matters with him, haven't you? A. Why, yes.

Q. Yes. Didn't he tell you, before you went before the Grand Jury the second time, that he wanted you

(Testimony of Grace Carey.)

to tell about Mr. Rose; that he wanted to get an indictment against Mr. Rose?

A. He did not. He told me to tell the truth and only the truth.

Q. The truth and nothing but the truth?

A. Yes.

Q. When he got you down in the grand jury-room he asked you about Mr. Rose, didn't he?

A. I don't remember whether he asked me, or whether he told me to name the other men.

Q. Anyway, the first time you mentioned Mr. Rose was when you were before the grand jury the second time, wasn't it? A. Yes.

Q. Yes. Now, Grace, haven't you owned a bicycle here in the last couple of years of your own?

A. Why, yes.

Q. For what length of time did you own a bicycle?

A. I don't know.

Q. About how long?

A. Only a few months.

Q. A month or a year?

A. Only a few months.

Q. Only a few months? When was that?

A. I don't know. The Kelley girls gave it to me. I don't know whether it was after they left or not.

[57]

Q. That would be 1913?

A. I don't know whether they were here—(Interrupted)

Q. You don't know when it was. And you kept it a few months, and what became of it?

(Testimony of Grace Carey.)

A. I sold it.

Q. You sold it? A. Yes.

Q. Now, while you had that you took that to Mr. Rose and got it repaired occasionally.

A. About once, yes.

Q. About once? A. Yes.

Q. You had skates all this time, didn't you?

A. Yes.

Q. And you took your skates there and got them mended.

A. I took skates there once for my sister.

Q. She had a pair of skates. A. Yes.

Q. You don't remember of taking your own skates there?

A. I have not got any skates of my own.

Q. You haven't got any. A. No.

Q. Anyway, between the skates and the bicycle you went to Mr. Rose's shop frequently in 1913, 14 and 15?

A. Not for the bicycle or the skates. No.

Q. You didn't?

A. No. I was only there two or three times for that.

Q. What did you go there for other times?

A. Just because I wanted to get the bicycle.

Q. He had a bicycle there that he loaned to you girls?

A. He loaned it to all the girls in town.

Q. All the girls, white and half breed girls, *hey*, whenever they asked him, didn't he? [58]

A. I am sure I don't know his business.

(Testimony of Grace Carey.)

Q. You know he loaned it to you when you asked for it, and you know he loaned it to Laura Herrington and these other half breed girls when they asked for it, don't you? Don't you know that?

A. I know he loaned it to lots of girls, and that is all I know.

Q. Grace, didn't you sometimes, you and Laura, and you and your sister, or yourself alone, go there into Mr. Rose's shop and ask him for a quarter?

A. Yes. Lots of times.

Q. Sometimes he would give it to you and sometimes he wouldn't? A. He always gave it to us.

Q. Always? A. Yes.

Q. Once in a while you asked him for fifty cents to go to one of these shows here where the admission was fifty cents, didn't you? A. Yes.

Q. And he gave you fifty cents a few times?

A. Yes.

Q. Did he refuse you sometimes? A. No.

Q. You are sure of that? A. Yes. I am sure.

Q. Grace, didn't you have a habit when you would go in there, if Mr. Rose wasn't forward in his shop, knowing that he had his bed right back of the partition there, didn't you walk right back in there to see if he was there? A. Why, yes.

Q. That happened often, didn't it? [59]

A. No.

Q. A good many times? A. No.

Q. A few times, then? A. Yes.

Q. Now, when you got back there to the partition,

(Testimony of Grace Carey.)

there is an opening seven or eight feet square, aint there?

A. I know there is an opening. Yes.

Q. Quite a large one. And when you would get back there and look in, you would see Mr. Rose right there on his bed, wouldn't you? A. Yes.

Q. And you would get him to get up and come forward and wait on you. Is that it? A. Yes.

Q. Now, you say that sometime two or three weeks before the Kelley girls went out in 1913, that you went into Mr. Rose's shop, and that you went back—he took you back, or you went back to his room. You told the jury that, haven't you? A. Yes.

Q. Do you know what time that was with reference to the 4th of July?

A. It was just a few days after the 4th.

Q. A few days after the 4th? A. Yes.

Q. You don't know how many days? A. No.

Q. What did you go in there for that day?

A. I went in after the bicycle.

Q. After the bicycle. How much money did you get that day? A. I don't know. [60]

Q. You got some money, did you?

A. Of course I did.

Q. Several dollars? A. I don't know.

Q. You don't know? A. No.

Q. Did you ask Mr. Rose for money?

A. I don't know.

Q. You don't? A. I don't remember.

Q. You don't remember. A. No.

Q. Did anybody go in there with you? A. No.

(Testimony of Grace Carey.)

Q. What time of the day was it?

A. I don't know.

Q. You can't tell anything about that, can you?

A. It was in the afternoon I think.

Q. What? A. I think it was in the afternoon.

Q. Are you sure it was in the afternoon?

A. I don't think I ever got the bicycle in the forenoon.

Q. You think it was in the afternoon?

A. I think it was. Yes.

Q. Do you think it was early in the afternoon?

A. I haven't the least idea.

Q. What?

A. I don't remember whether it was early or late.

Q. How long were you in there?

A. I don't know.

Q. About how long? A. I don't know.

Q. You don't know whether it was five minutes or ten minutes? A. I didn't count the time.

Q. It might have been an hour or two.

A. Yes, for all I know. [61]

Q. And Mr. Rose had the front door locked all the time. A. No. He locked it after I went in.

Q. But he kept it locked all the time you were in there. A. Yes. He did.

Q. And he unlocked it when you got ready to get out. A. Yes.

Q. Yes. That might have been two or three hours for all you know. Where were you all the time you were in the shop that day? A. In the back room.

Q. Lying on the bed? A. Yes.

(Testimony of Grace Carey.)

Q. All the time? A. No.

Q. No. What were you doing the balance of the time? A. Standing up.

Q. Standing up. Did you sit down there at any time in the back room? A. Yes.

Q. Sat there a while. A. Yes.

Q. You had done that lots of times before, gone in and sat down and talked with him? A. Yes.

Q. Where did you go when you left there?

A. I don't know.

Q. How? A. I don't remember.

Q. Did you get the bicycle? A. Yes.

Q. You went bicycle riding then. [62]

A. I suppose so.

Q. Yes. Now, you have told the jury that you had intercourse with him once before that. A. Yes.

Q. About how long?

A. A little over a week or two weeks.

Q. A little over two weeks?

A. I said about a week, or a little after that, or two weeks.

Q. You had had intercourse with a good many men—(Interrupted)

A. I did not.

Q. — before that, hadn't you, and boys?

A. No.

Q. What?

A. I did not have intercourse with no boys.

Q. You don't have anything to do with boys at all?

A. That is no sign I have to have sexual intercourse with them.

(Testimony of Grace Carey.)

Q. But you did have sexual intercourse with older men before that? A. Yes.

Q. And since that you have had sexual intercourse with a great many men, haven't you?

A. I have not.

Q. With quite a number? A. I have not.

Q. With men?

(Plaintiff objects as irrelevant, incompetent and immaterial, objection sustained.)

Q. Grace, do you remember along about 1913 not a very great ways either side of the 4th of July, that you went into Mr. Rose's [63] shop and he was sitting down and that you jumped up and came down with your heel on his toe and hurt him pretty badly?

A. No.

Q. You don't remember that? A. No.

Q. That didn't happen.

A. I don't remember whether it happened, but I don't remember it.

Q. You don't remember. A. No.

Q. Didn't he get angry with you and tell you not to come in there any more?

A. I don't remember it.

Q. He has told you a number of times to keep away from there, and that he didn't want you there?

A. No.

Q. He didn't like you very well.

A. I don't know. He always seemed friendly to me.

Q. Always? A. Yes. Always.

Q. Didn't he, a great number of times, tell you to

(Testimony of Grace Carey.)

go out of the shop? A. He did not.

Q. Did he ever, once?

A. Not that I remember of.

Q. Not that you remember. Grace, do you remember one time that you worked for Mrs. Whitely and took care of her baby a little while? A. Yes.

Q. Do you remember being in Mr. Rose's shop one time after you [64] quit tending to Mrs. Whitely's baby, and another girl come along with the baby in a baby carriage and rolled it into Rose's shop. Do you remember that occurrence? A. No.

Q. And you were there. Do you remember of telling that girl that she had no right to have the care of that baby; that you wanted to be taking care of the baby? A. No.

Q. Didn't you tell her that? A. No.

Q. Isn't it true that that little girl was sitting down in a chair and that you took her by the hair and yanked her and the chair right back onto the floor, or nearly so—Cleora, or some such name? Do you remember the name? A. Yes.

Q. What was her name? A. Cleora Cassidy.

Q. Didn't you take that girl by the hair of the head—(Interrupted)

A. I did not take her by the hair.

Q. — and jerked her backward—(Interrupted).

A. I did not.

Q. — onto the floor?

A. I took her hat and I threw it to the Petree girl, and the Petree girl took it and threw it into the street now.

(Testimony of Grace Carey.)

Q. And then you took the girl by some part of her body and shoved her back over? A. I did not.

Q. You didn't? A. No. [65]

Q. Did you take hold of her at all?

A. No. I just grabbed her hat.

Q. Just grabbed her hat. A. Yes.

Q. You were angry with her because she had got your place. A. I was not.

Q. You were not angry with her at all.

A. Not for that.

Q. What? A. I wasn't angry for that.

Q. Grace, didn't you have some fights there in that shop with some other girls?

(Plaintiff objects as irrelevant, incompetent and immaterial. Defendant states that he wants to show that this witness conducted herself in such a way that Mr. Rose asked her and ordered her out, and tried to make her stay from there altogether; that that is the purpose of the question. The Court overruled the objection.)

Q. Didn't you have fights with Eva Delaney and other white girls in there? A. No.

Q. Not with any of them? A. No.

Q. Not at any time?

A. No. I had no fights with them. I might have said something to them, but I had no fights with them.

Q. You quarreled with them in there?

A. No, I didn't quarrel either.

Q. You didn't. Just talked with them in an ordinary way?

A. No. I might have said something against them.

(Testimony of Grace Carey.)

Q. Something against them? A. Yes.

Q. And didn't Mr. Rose when that occurred, didn't he tell you to get out? A. No. [66]

Q. That he didn't want you in there?

A. No. He used to talk about Eva Delaney himself.

Q. Grace, didn't Mr. Rose have to take you away or off of this girl, Eva Delaney, that you had hold of her hair? A. Why, no.

Q. And didn't he have to pull your hands away from her hair and get you apart? A. He did not.

Q. Nothing of that kind happened.

A. No.

Q. Nothing of that kind happened. A. No.

(Court takes a recess until 1:45 P. M., to-day, and jury withdraw in charge of bailiffs after receiving usual adminitions; and, after recess, the defendant and his attorney, the district attorney and the jury are present, and the trial is resumed; the witness, Grace Carey, on the stand under cross-examination.)

Q. Grace, did you within the last two or three years have a photograph taken when you were nude, with your clothes all off? A. No. I did not.

Q. No such thing. Any such photograph as that of you in this town? A. Why, no.

Q. Grace, when you came back from the Iditarod on the "Washburn," when you got as far as Gibbon, you had to stay there a few days, didn't you?

A. Yes.

Q. About how many days?

A. About three days.

(Testimony of Grace Carey.)

Q. Isn't it true that while you were there that you got acquainted with a good many of those soldiers?

[67]

A. I knew a great many of those soldiers up here.

Q. How is that?

A. I knew a great many of those soldiers when they came up here.

Q. Didn't you get acquainted with them there at Gibbon? A. I knew them up here.

Q. Listen now. Didn't you get acquainted with the soldiers that are stationed at Gibbon and that didn't come up here?

A. I knew all the band boys and the baseball boys, but I didn't get acquainted with any of them there.

Q. Didn't you get acquainted with them first at Gibbon?

A. No. They were up here before I was down at Gibbon.

Q. They were. Are you sure of that?

A. I know it.

Q. You know it. They were up here playing baseball, and were here several days, were they, last year? A. Yes. They were.

Q. You got acquainted with pretty much all of them? A. Yes.

Q. Grace, do you remember an occasion one time out there after a baseball game—now, you have testified to the jury that you have never had any sexual intercourse with young men and boys, I believe, haven't you?

(Testimony of Grace Carey.)

(Plaintiff objects as heretofore testified to. Sustained.)

Q. Grace, do you remember an occasion out there at the baseball park or grounds after the game was over and the crowd was leaving the grandstand and coming down, when a young man, a soldier—he might have been a signal corps man, or he might have been a musician. I don't know about that—he [68] had a uniform on, anyway—was standing right there at the end of the grandstand where the people come down and pass through that little gangway—you know where that is—he was standing there towards the post, that would be nearest the gate that you go out of the yard, and that young man was making a date with you and making arrangements with you to meet him at a certain time at a place down town, and that you told him, yes, you would? A. I did not, now.

Q. You did not? Didn't you see myself and my wife passing there just at that time?

A. I did not, because there was no such thing as that occurred.

Q. There was not? A. No.

Q. You didn't talk to that young man there that had a bicycle right there leaning up against that post, when he was making that arrangement with you? A. He did not, now.

Q. He did not. A. No.

Q. You are sure of that? A. Well, I am sure.

Q. And you didn't have any sexual intercourse with any of those boys? A. I did not.

(Testimony of Grace Carey.)

Q. You was around with them a good deal?

A. I was not.

Q. Was you some?

A. No. I have only danced with them up at the dance.

Q. How did you get acquainted with them?

A. Up at the dance. [69]

Q. You didn't get acquainted with them out there at the fair ground? A. No. I did not.

Q. None of them? A. No.

Q. Grace, when did you tell me, now, that you first commenced telling Mr. Roth about having had sexual intercourse with men?

A. I didn't tell you when I first talked with him.

Q. When was it; how long ago?

A. I don't know. About a month or two. It was before I went before the Grand Jury.

Q. How long before the Grand Jury?

A. I don't know.

Q. Didn't you talk to him last year about it?

A. I did not.

Q. You talked to him as much as a month or two before the Grand Jury met? A.No.

Q. About how long?

A. I don't know, but it was not that long.

Q. Where did you see him and talk with him?

A. Well, he sent for me.

Q. He sent for you. Did you ever talk with him at your home?

A. He has never been up at my home.

Q. He has never been to your home? A. No.

(Testimony of Grace Carey.)

Q. Never once? A. No.

Q. He has not talked to your father and mother?

[70] A. Yes. He talked to them.

Q. But that would be down here too, would it?

A. Yes.

Q. Now, he has advised you a great deal about how you should testify before the jury, has he not?

A. Why, I don't remember anything. All he has told me is to tell the truth. That is all.

Q. Didn't he explain to you the word you used, "sexual intercourse"?

A. Yes. I asked him the word.

Q. He explained that word to you? A. Yes.

Q. You hadn't heard of that word before, had you? A. No.

Q. Grace, didn't Mr. Roth promise you that if you would testify right on the stand now as a witness for the Government in this case, on all these cases, and make the same promise to Laura Herrington, that if you two girls would give testimony favorable to the Government as witnesses on the stand, that he would not send you to the reform school?

A. He did not. He made no promises at all.

Q. Didn't he promise you and Laura that he wouldn't send you to the reform school, but he would send you out to a convent?

A. He did not promise us nothing.

Q. He didn't talk to you.

A. Yes. But he didn't promise. He said he

(Testimony of Grace Carey.)

wouldn't say anything until these trials were all over.

Q. How is that? [71]

A. He said he wouldn't say anything until these trials were all through with.

Q. But he held out the hope to you that he wouldn't send you to the reform school, but he would send you to that convent? A. He did not.

Q. Isn't that what you expect now? A. No.

Q. You knew before the grand jury met that you might be taken in charge?

A. I am not a bit scared of no reform school at all.

Q. Were not you a little bit apprehensive and scared that you might be sent to the reform school?

A. No. I was not.

Q. You was not? A. No.

Q. You did want to go to that convent?

A. I don't care whether I go to that convent or not.

Q. Do you know the Petree girls?

A. Yes, of course I know them.

Q. You know they are out there at that convent.

A. Why, of course.

Q. Didn't you and Laura both want to go out to that convent?

A. We wanted to go, yes, but that was no sign we were going.

Q. You were talking with Mr. Roth about that.

A. We was not. He just suggested that he thought that would be a nice place for us to go, but he didn't promise us anything.

(Testimony of Grace Carey.)

Q. Mr. Roth suggested that would be a nice place for you. A. Yes. [72]

Q. He said that would be a nicer place than a reform school.

A. He didn't say that either.

Q. Now, you and Laura Herrington are great friends, ain't you? A. Why, yes.

Q. You are together a great deal, ain't you?

A. No. We are not together a great deal.

Q. Haven't you been companions very frequently for years, here? A. No. We haven't.

Q. You haven't? A. No.

Q. Haven't you for the last two or three years?

A. No.

Q. How long?

A. This last year was the first time we went together hardly at all, only coming and going to school.

Q. You go down to her house?

A. No. I don't go there very often.

Q. She comes to your house?

A. No, she don't come to my house either very much.

Q. She is about the same kind of a girl you are, ain't she, Grace? A. I don't know.

Q. You don't know. Can't you tell from her talk? Don't you think she is?

(Plaintiff objects as irrelevant, incompetent and immaterial. Objection sustained.)

Mr. PRATT.—That is all. [73]

(Testimony of Grace Carey.)

Redirect Examination.

(By Mr. ROTH.)

Q. Mr. Pratt asked you about the first time you talked to me. That was not before the Grand Jury convened here, was it?

A. It was before I went before the Grand Jury.

Q. A day or two or three before you went before the Grand Jury, a few days before you went before the Grand Jury? A. Yes.

Q. I will ask you to state whether or not there was anything said at all between me and yourself about you going anywhere until after you had told your whole story to Joe Miller and myself.

A. No. You didn't say anything until way after that.

Q. All right. Isn't it true that you and Laura Herrington came to Mr. Reid Heilig and myself in my office within the last two weeks, and the two of you together stated that if we couldn't do any better that you girls wanted to be sent to a reform school because you had to get out of this town? A. Yes.

Q. And you couldn't stay here; that people were calling you Indians and that it was impossible for you to remain here and it was necessary for you to get out of the town? A. Yes.

Q. And you would rather go to the reform school than have to stay here? Isn't that true?

A. Yes.

Mr. ROTH.—That is all.

(Testimony of Grace Carey.)

Recross-examination. [74]

(By Mr. PRATT.)

Q. There was further conversation about going to the convent; that that would be still better, wasn't there? Besides talking about the reform school, didn't you, in that same connection, talk about wanting to go— (Interrupted.)

A. We didn't mention about wanting to go to no convent.

Q. No? But Mr. Roth suggested that to you.

A. He said that would be a better place even than the reform school, and we could do better there.

Q. When he suggested that, then you thought so too.

A. Of course we thought it was a better place than a reform school.

Q. You wanted to go to the convent also because of the Petree girls being there, and you knew them. Wasn't that one reason? A. Why, no.

Mr. PRATT.—That will do.

Mr. ROTH.—That is all.

Testimony of John J. Buckley, for Plaintiff.

JOHN J. BUCKLEY, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. What is your name? A. John J. Buckley.

Q. What official position, if any, do you hold?

A. City Clerk or Municipal Clerk, and Magistrate,

(Testimony of John J. Buckley.)
and Chief of the Fire Department of the town of Fairbanks. [75]

Q. Have you in your possession the records of the town of Fairbanks? A. Yes, sir.

Q. Have you a record of the registrations of the town? A. Yes, sir.

Q. Have you a record of the registration of Mr. J. P. Rose? A. Yes, sir.

Q. Will you turn to the record, please?

A. I have it here. (Produces book.)

Q. What is that record?

A. An oath taken by Mr. Rose.

Q. On registration? A. On registration.

Q. Is it signed? A. Yes.

Q. By whom? A. By Mr. J. P. Rose.

Q. Is it sworn to? A. Yes, sir.

Q. Before whom?

A. Albert J. Pauli, town registrar and municipal magistrate.

Q. What is the date of it?

A. The 26th day of March, 1915.

Q. Does it disclose the age of Mr. Rose?

A. Yes, sir.

Q. What age does it give? A. Fifty-nine years.

Mr. ROTH.—You may cross-examine.

Mr. PRATT.—That is all. [76]

Testimony of Laura Herrington, for Plaintiff.

LAURA HERRINGTON, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. What is your name?

A. Laura Herrington.

Q. How old are you? A. Fourteen.

Q. Are you acquainted with Mr. J. P. Rose, the defendant? A. Yes, sir.

Q. Are you acquainted with Grace Carey?

A. Yes.

Q. I will ask you to state whether or not you went to the place of business of Mr. Rose in the town of Fairbanks, shortly after the Grand Jury convened this year? A. Yes.

Q. What did Mr. Rose say there at the time to you and Grace Carey?

A. He said: "You girls better be careful, because the Grand Jury is in session now."

Mr. ROTH.—You may cross-examine the witness.

Cross-examination.

(By Mr. PRATT.)

Q. Didn't you understand him to mean that you girls better be careful how you were flying around with boys and men and getting into trouble while the Grand Jury was in session? Isn't that what you understood?

A. I don't know. I wish you would speak a little louder.

(Testimony of Laura Herrington.)

Q. Didn't you understand Mr. Rose to mean that you and Grace better be a little careful how you were flying [77] around the streets here, running around the streets with boys and men while the Grand Jury was in session; that you would get yourselves and get them, too, into trouble? Isn't that what he meant? A. No.

Q. Isn't that what you understood?

A. No. I did not.

Q. You didn't. A. No.

Q. You understood something else, then, different from that. How long before the Grand Jury was in session was that, Laura? A. I don't know.

Q. You don't know. Was it a few days or a week or a year or what? A. It was not a year.

Q. Was it six months? A. I don't know.

Q. You don't know. All right. We will let that go.

Mr. ROTH.—That is all.

Testimony of James Fairborn, for Plaintiff.

JAMES FAIRBORN, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. Mr. Fairborn, what position do you hold in the town of Fairbanks?

A. General agent for the White Pass & Yukon Route.

Q. Have you the custody of the list of passengers who sailed on the company's boats from the town of

(Testimony of James Fairborn.)

Fairbanks— A. Yes, sir. [78]

Q. —for the year 1913? A. Yes, sir.

Q. Have you anything of record that will show when Agnes and Vera Kelley left the town of Fairbanks?

A. Yes, sir. I think so. (Examines a paper.)

Q. When did they leave the town of Fairbanks?

A. 24th of July, I believe it was. Yes, July 24th.

Q. What year?

A. 1913, on the steamer "Yukon."

Q. On the steamer "Yukon." A. Yes, sir.

Q. Have you a personal recollection of their going?

A. Well, I just remember the two girls going.

That is all.

Mr. ROTH.—You may cross-examine.

Mr. PRATT.—No cross-examination.

Testimony of Marion Carey, for Plaintiff.

MARION CAREY, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. State your name. A. Marion Carey.

Q. Are you acquainted with Grace Carey?

A. Yes, sir.

Q. The witness that has been just on the stand here? A. Yes, sir.

Q. What relation does she bear to you?

A. My daughter.

Q. She is your daughter. A. Yes.

Q. How old is she? [79]

(Testimony of Marion Carey.)

A. She was born in 1901, on the 23d day of March.

Q. Where was she born? A. Circle City.

Q. Was she ever married? A. No, sir.

Q. Is she the wife of J. P. Rose, the defendant in this case? A. No, sir.

Mr. ROTH.—You may cross-examine.

Mr. PRATT.—That is all.

Mr. ROTH. —The Government rests.

Mr. PRATT.—I move the Court to instruct the jury to return a verdict of not guilty on the ground of the insufficiency of the evidence.

The COURT.—If you have a motion you desire to present, I will have the jury withdraw.

Mr. PRATT.—All right.

(The jury, after being admonished as usual, withdraw from the courtroom in charge of the bailiffs. The motion is argued, whereupon the jury are brought into Court.)

The COURT.—The motion presented will be denied.

Mr. PRATT.—We except.

The COURT.—Exception allowed. [80]

Testimony of J. P. Rose, In His Own Behalf.

J. P. ROSE, the defendant, a witness in his own behalf, after being sworn, testified as follows:

Direct Examination.

(By Mr. PRATT.)

Q. Mr. Rose, you are the defendant in this case.

A. Yes, sir.

Q. How long have you lived in Fairbanks?

(Testimony of J. P. Rose.)

A. Since 1907.

Q. What line of business have you followed?

A. Repair-shop most of the time. One year I was steamboating, one summer rather, 1908.

Q. Where has your place of business been for the last two or three years?

A. Between First and Second on Lacey Street.

Q. On Lacey Street between First and Second Avenues, and your shop there is about what depth?

A. Forty-five feet.

Q. And how far is it from the front end to the partition? A. Twenty-nine feet.

Q. Twenty-nine. How much of an opening have you got there? A. I believe it is seven feet.

Q. Seven feet square? A. Yes.

Q. Where is your bed?

A. Just to the right hand as you walk in.

Q. I suppose you have some chairs in there?

A. Yes. One.

Q. There is where you sleep? A. Yes. [81]

Q. What kind of machinery did you have, mechanical machines of different kinds were brought there for you to repair?

A. You mean in my shop?

A. Yes, in your shop.

A. Well, I have a lathe, I have considerable small tools, a motor—My power is furnished with a motor—emery wheel.

Q. What kind of instruments now and implements did you repair?

A. Well, we hardly ever turn anything over that

(Testimony of J. P. Rose.)

we can handle in our shop.

Q. When you repaired, what did you repair?

A. Typewriters, cash registers, bicycles, guns.

Q. Anything about skates?

A. Sharpen skates, yes, sir, and repair them.

Q. Did you have a last there for sharpening your skates?

A. I have an emery wheel to sharpen them, and I have a last there to do any work that is to be done in connection with the skates and the shoes.

Q. Got ammunition for sale? A. Yes.

Q. Shot guns and rifles? A. Yes.

Q. What has been the result of that line of business in the matter of attracting to your shop girls and boys?

A. Well, I would venture to say that there would not be an Indian or a white girl or a boy that has not been to my shop on some errand or other in Fairbanks.

Q. They were there frequently, were not they?

A. Oh, yes. Every day some. [82]

Q. All that had bicycles and all that had skates, and some of them would come to buy ammunition, wouldn't they?

A. Yes, and to borrow and to hire guns.

Q. Borrow and hire bicycles. A. Yes.

Q. Hire guns. A. Yes, sir.

Q. Now, what would fetch these girls there generally? A. The same thing.

Q. What?

(Testimony of J. P. Rose.)

A. Any little thing that they would want, they would come.

Q. What would they usually want?

A. Well, some wanted a bicycle, and some their mother sent them there to get a knife sharpened or shears sharpened, and so on.

Q. Anything to do with their skates at times?

A. Oh, yes. When skating season is on, they come with their skates to get them sharpened.

Q. Now, you take these Indian girls, the Morency girls and the Herrington girls and the Carey girls—(Interrupted).

A. Yes.

Q. You knew them, and they were all there at times? A. Yes, at different times.

Q. And the boys in those families, too.

A. Both the boys and the girls.

Q. What, if any, difference in the deportment of girls, young girls we will say now in your shop, was there between the Indian girls and the white girls that would come there? [83]

A. Oh, there is quite a difference between their behaviour and so on.

Q. Give the jury some idea, generally.

A. If I am laying down back in the back part, and the Indian girls come in, they will bolt right straight on back; but the white girls, if they come in, they will call me.

Q. What are the habits of this Carey girl, that was on the stand here, coming back where your bedroom was?

(Testimony of J. P. Rose.)

A. Oh, she was just bold, would come in and go through everything that you would let her to, generally went over the shop when she would come in.

Q. What, if anything, in the matter of begging money off of you by those Indian girls?

A. Oh, if I would give her money every time she asked me for it, I would have been bankrupt myself. She is always wanting something, and wanting me to get it for her.

Q. Which one? A. Grace.

Q. She had a little sister, didn't she? A. Yes.

Q. A smaller one. Was that child the same?

A. No.

Q. Quite different.

A. As much difference as there was between day and night. She was nice. I liked her. She would come in, and if there would be men standing around, I would give her a bingle or something and tell her to go off and buy some candy, for the simple reason, why, men talking, they would use rough language; and I defy any white girl or Indian girl of ever hearing any rough language from me in my [84] shop, or going away insulted in any way; and I will say, Grace Carey, I have ordered her out of the shop different times, told her to go away.

Q. Now, you say she was very persistent in begging money from you.

A. Oh, yes, very much so.

Q. Did you give her money at any time?

A. Two bits. Sometimes there would be two of them together and they wanted to go to the show,

(Testimony of J. P. Rose.)

and I would give them four bits, but not all the time.

Q. Was there anything that occurred there one time that was particularly disagreeable, back there in 1913, two or three years ago, misconduct by this Carey girl, jumping onto your foot?

A. Oh, that was right in front of the shop. She was—I had a cash register on the bench at the time that I was using myself, and I had to keep it locked on account of her, and just keep the side lock turned all the time and the keys wouldn't go down, and she came in and pounded at those keys a little bit, and then she jumped right sideways on her heel right on my foot. I was sitting down in a chair just like this, and I told her to go on away and not come back any more. She said—(Interrupted)

Q. How long ago was that?

A. Oh, it is a couple of years, maybe two years and a half.

Q. Was there any other instance in there where she made herself particularly disagreeable in the matter of treating other girls?

A. Yes. There was one Sunday I was a-laying down back in [85] my room, Sunday afternoon, and her and Hazel Petree came in and they came on right back and went talking to me; and I says; "Who has come in?" Grace says: "It is Eva. Her Royal Highness Eva," is the way she said it.

Q. What?

A. "Her Royal Highness Eva." And I just raised up, and the two of them went forward then, and I was studying about something and I didn't just come

(Testimony of J. P. Rose.)

out right away. Directly I heard sharp words, then quick steps, and I went out, and the three of them were locked together with their fingers in their hair, and I run right out and took right a-hold of them, and the Petree girl got out of the way, and Grace she used her hands herself, and I had to loose Eva's hands out of Grace's hair, and as soon as I loosed Eva's hands, Grace she ran away, and the next time she came back she accused me of taking sides with Eva.

Q. Of taking sides with Eva. A. Yes.

Q. This is Eva Delaney.

A. Well, Eva was hurt so bad and sore about it after I loosed her that she cried, and I wouldn't allow her out of the shop until she dried up her tears.

Q. You heard that girl say that you had talked to her about this Delaney girl. What do you say to that?

The COURT.—What was the name, Delaney?

A. Yes.

The COURT.—Cassidy was the name, I thought.

Mr. ROTH.—No Eva Delaney. [86]

WITNESS.—Eva Delaney. Those were the two that had the fight.

Mr. PRATT.—You heard her tell that you had talked with Grace when Eva Delaney wasn't around, I suppose to the effect that there was something the matter with Eva Delaney, that she was not a nice girl.

A. Eva Delaney is as nice a little girl as there is in Fairbanks. I have got nothing to say against Eva

(Testimony of J. P. Rose.)

Delaney in any way.

Q. The point is, did you say anything to this Carey girl, Grace Carey, that she was not a good girl?

A. No.

Q. Never at any time? A. No. No.

Q. Mr. Rose, was there anything that happened there with another girl? A. Yes.

Q. Who was that?

A. I forget the girl's last name, Cleora. I saw you write it down this morning. She came in with Whitely's baby in a carriage. I forget just exactly what was the matter with the buggy, and I sat the chair around just like this, and I says: "I have got to pull that wheel off, and you will have to hold the buggy or take the baby out." She says; "I would rather hold the buggy." And she sat down on the chair and held the buggy, and I took the wheel off and took it up to the vise and whatever was to do to it, I repaired it, and just as I slipped it on—well, Grace came while I was working at the vise, and I [87] heard her say; "What are you doing with that baby? That is my baby to take care of." And Cleora told her that she was going to take care of it this afternoon. And I went back, and, in order to put the wheel on and put the nut on, I got right down on my knee, and so the buggy wouldn't slip I held it, and Grace grabbed her by the hair and turned her right over backwards; then she ran away.

Q. What did you do after she jumped on your foot at that time?

A. I ordered her right out then, and she stayed

(Testimony of J. P. Rose.)

away probably three or four days.

Q. You told me about her running away. Was that the time she pulled the girl over?

A. Yes. I scolded her pretty strong when she done that, but I didn't get at her until she came back again, and I told her I wanted her to be more civil with other little girls there.

Q. Mr. Rose, did you have occasion to reprimand that girl many times, or a few times, or what?

A. Oh, I have spoken to her at different times that it was a shame, and compared her, and told her what she was, compared to her older sister, and told her how nice her older sister was.

Q. Her older sister? A. Yes.

Q. Did you know her older sisters?

A. Just a speaking acquaintance.

Q. The one they call Eva? [88]

A. Yes, Eva Carey, just a speaking acquaintance is all. She has been there a time or two. She sent her skates down there and got them sharpened, and Grace she was going to bring me back the money, but the money has not been brought back.

Q. Now, then, your regard for Grace as compared to the other girls was what? What do you say about that?

A. Well, I can't say that I ever liked Grace at all. I always treated Grace with just as much courtesy as I could, and under the circumstances didn't care to be rough or harsh with any girl. I think they—I think all the girls in Fairbanks will back me up in that, and the boys, too.

(Testimony of J. P. Rose.)

Q. Mr. Rose, you heard that girl, Grace Carey, tell about coming in there on two occasions. It must have been the latter part of June and along about the 4th of July, 1913, and that you had sexual intercourse with her back there on your bed. What do you say to this jury about that?

A. I say it is absolutely false.

Q. Did you ever have any conversation with her on that subject?

A. I would never allow her to approach me on that subject.

Q. Did she ever try to?

A. No. I always considered I was out of trouble.

Q. Did the girl ever introduce that subject around you?

A. I would never allow her at all. I have seen some very bold actions she has made around there, her and the Herrington girl both.

Q. So, her testimony with regard to your having intercourse with her on that bed is a falsehood?
[89]

A. It is absolutely false. I had been laying on the bed different times; she told the jury there that she had come in there. She said she would stand three or four feet from the bed. That is a fact. That is a fact that she always stayed her distance, and I never invited her to come any closer at all.

Q. Mr. Rose, you were a witness before the Grand Jury in the Wooldridge case, were you not?

A. I was.

Q. And afterward, you were a witness in this

(Testimony of J. P. Rose.)

case for the Government— A. I was.

Q. In the Wooldridge case. A. I was.

Q. You were called by the Government both times, were you not? A. Yes, sir.

Q. Do you remember the date that you were on the stand in the District Court here?

A. I believe it was on the 9th of March.

Q. Ninth of March? A. I believe that was it.

Q. You had been before the Grand Jury in the Wooldridge case along the 16th, 17th or 18th of February, hadn't you?

A. It was some time before. I wouldn't say the date at all.

Q. Eight or ten days before, wasn't it?

A. Yes. Some time before.

Mr. ROTH.—It was the 17th day of February.

Mr. PRATT.—March?

Mr. ROTH.—That Rose was before the Grand Jury on the 17th day of February. [90]

Mr. PRATT.—All right. Mr. Rose, after you had been a witness before the Grand Jury in the Wooldridge case— A. Yes.

Q. —on or about the 17th of February, and before you went on the stand as a witness for the Government in the Wooldridge case on the 9th of March, did you know that this indictment had been found by the Grand Jury against you?

A. Well, I had heard a good deal about it, but I had nothing sure about it.

Q. After the delivery of your testimony, isn't it

(Testimony of J. P. Rose.)

true that Mr. Roth was much put out and angry at you?

A. He spoke pretty short to me when I asked him if he was through with me.

Q. What did he say?

A. You needn't call for me any more—you needn't to report to me any more.

Q. Since that—(Interrupted)

A. I have not—(Interrupted)

Q. —he has filed a complaint against you charging you with perjury in that case, has he not?

A. He has.

Mr. PRATT.—Cross-examine.

Cross-examination.

(By Mr. ROTH.)

Q. The reason—No. The complaint that was filed against you, that you were speaking of, by myself charged you with perjury on account, as alleged in that complaint, that you gave false testimony at the trial of the Wooldridge [91] case here. Isn't that what is alleged in the complaint?

A. I believe so.

Q. Yes. Isn't it true that while on the witness-stand here in the Wooldridge case that you did swear differently than you swore before the Grand Jury?

A. No.

Q. That is not true?

A. No. Not to my best recollection.

Q. Isn't it true that what you swore to here on the witness-stand upon the subject of what you

(Testimony of J. P. Rose.)

heard Mr. Wooldridge say in your shop was contrary to a sworn affidavit that you made within an hour of the time that the conversation with Wooldridge occurred?

A. I find both words there on that. I did not read the thing myself. I find just what I said before the Grand Jury, and here "I was led to believe that he would," and how that word got in there, "He told me that he wanted to," it is a blank in my mind. It is a blank in my mind.

Q. Is that your signature, Mr. Rose? (Hands paper to witness.) A. It is. It is, sir.

Q. Didn't you make that signature to this paper within an hour of the time that the very conversation took place that is referred to in this paper?

A. In that neighborhood.

Q. All right. Isn't it true that this was read over to you after it was made up, by Frank Hall?

A. It was.

Q. Isn't it true that it was written down by J. H. Miller, the Chief Deputy Marshal, at your dictation?

A. It was. [92]

Q. Isn't it true that you told Mr. Miller, Mr. J. H. Miller, at the time that this statement of yours which you signed, which is marked Plaintiff's Exhibit Number 1 in the United States vs. Wooldridge, that you dictated to Mr. J. H. Miller the following:

Mr. PRATT.—May it please the Court, this is not cross-examination. I didn't go into any details about that. Now, if he does, we have got to try two cases here; but we are satisfied entirely to do that

(Testimony of J. P. Rose.)

if the Government wants to.

Mr. ROTH.—Then, what are you objecting for?

Mr. PRATT.—I say it is not cross-examination. You have a right to ask him if there was a discrepancy between that statement and his testimony before the Grand Jury, but he will explain that, he being sweated down there, and he wasn't doing the writing.

Mr. ROTH.—That is what you say, but I say he was not sweated.

Mr. PRATT.—Five deputies standing over him.

Mr. ROTH.—That is what you say, but you are not under oath.

Mr. PRATT.—He will say so in a minute.

The COURT.—You may proceed.

Mr. ROTH.—Q. Isn't it true that you dictated to Mr. J. H. Miller, at the time that you gave this statement, the following: (reads) "Wooldridge asked me about Laura while I was lying on the bed, and said he wanted to screw her, or words that gave me to understand that he wanted to have sexual intercourse with her." Isn't it true that you dictated that to J. H. Miller? [93]

A. Not just in them words, I don't think. Don't that read: "I was led to believe such"? That is the way that I read.

Q. Here is the way it reads. I read it to you.

A. That is the way, did it read: "I was led to believe"?

Q. (Reading) "Wooldridge asked me about Laura while I was lying on the bed and said he wanted to

(Testimony of J. P. Rose.)

screw her, or words that gave me to understand that he wanted to have sexual intercourse with her." Now, did you dictate that to J. H. Miller there within an hour of the time that you had the conversation, or did you not?

A. I will say that that ought to read: To the best of my knowledge I was led to believe that he would do that. But he never told me, as I said here on the stand, that he wanted to screw her, as that thing said.

Q. And didn't you testify here in the Wooldridge case positively that never, at any time, at that time or any other time, did Wooldridge ever suggest or intimate to you that he wanted to have sexual intercourse with Laura Herrington? Didn't you so testify when you were a witness on the stand here in the Wooldridge case?

A. I think I testified that he never told me that he wanted to. I think that is to the best of my knowledge.

(Here the Court takes a short recess until 3:10 to-day and the jury withdraws from the courtroom after being admonished as usual by the Court; and, subsequently return into Court, when the defendant and his attorney and the district attorney are present and the trial is resumed.)

(Mr. Pratt asks and is granted permission to ask a question of the witness, on direct examination.)

Q. You heard the testimony of those girls about some conversation you had with them before the Grand Jury met, about the time the Grand Jury

(Testimony of J. P. Rose.)

met this year. A. Yes. [94]

Q. Grace Carey and Laura Herrington.

A. Yes, sir.

Q. State to the jury what that was.

A. Why, they came in there one evening and I says: "Well, are they going to get you before the Grand Jury this time?" And Grace says, "What can they get us up for?" or "What can they do?" I believe. And I says: "I guess they can't do anything. But you want to straighten up and be little ladies and then they won't try to do anything." Just exactly the words. They wasn't in there over two minutes. When I said that, they left. They didn't ask me for anything, or anything of that kind.

Mr. PRATT.—That is all.

Cross-examination (Resumed).

Mr. ROTH.—If the Court please, I desire to introduce in evidence that portion of this document which is marked Plaintiff's Exhibit Number 1 in the case of the United States against Wooldridge, which I asked this witness about.

Mr. PRATT.—It has been read to the jury twice. That is the part, isn't it?

Mr. ROTH.—Yes. Very well, with that understanding.

Mr. PRATT.—If it goes in at all, the whole statement will have to go in.

Mr. ROTH.—Q. At the time that you testified in the case of the United States against Wooldridge in this court, did you not, on your direct examination, testify as follows:

(Testimony of J. P. Rose.)

“Question, by Mr. Roth. When you were lying on the couch there, did Wooldridge say anything about Laura Herrington? [95]

Answer. I believe that while I was lying on the couch there that he told me about that sack of potatoes, and what the conversation drifted to I wouldn't be positive what it did go to.

Mr. ROTH.—That is not an answer to the question at all, if the Court please.

The COURT.—Answer the question, Mr. Rose.

Answer. Well, I don't remember that he did.

Mr. ROTH.—Was there anything said while you were lying there on the bunk, between you and Mr. Wooldridge at that time, about the Grand Jury being *is* session?”

Mr. PRATT.—What is all this about?

Mr. ROTH.—That last question I withdraw.

Q. Referring to the same question which I read before: (Reads.)

“When you were lying on the couch there, did Wooldridge say anything about Laura Herrington?

Answer. There is a part of that question which I did answer, but the ‘sexual intercourse’ I did not.”

No, that is not it. Here is another question. In response to the following question, did not you testify as follows, while you were on the witness-stand

(Testimony of J. P. Rose.)

here as a witness in the case of the United States against Wooldridge: (Reads.)

“Didn’t you, before the Grand Jury under oath”—this is a question—“while it was in session here, testify that while you were lying on the couch in your office the evening that Laura Herrington came there that—in substance as follows: Wooldridge asked me about Laura while I was lying on the bed and said he wanted to, or gave you to understand that he wanted to have sexual intercourse with Laura, and you answered and said, ‘I wouldn’t have anything to do with her until after the Grand Jury get through; that the Grand Jury would get hold of a thing of that kind and would investigate it and that you said, ‘It wouldn’t be safe,’ and you further said, ‘In order to get at that, they would take her up to Roth’s office, then they would take her to one of the assistants, then back down to the Grand Jury-room again, and they would sweat her until she would have to tell it.’ Did you so testify before the Grand Jury? [96]

Answer. There is a part of that question which I did answer, but the ‘sexual intercourse’ I did not. I said to the Grand Jury about taking her to the Grand Jury and back again; but Wooldridge never said to me that he intended to have intercourse, or would have it.”

Did you so testify when you were on the witness-stand here before? A. I did.

(Testimony of J. P. Rose.)

Q. Did you further testify when you were on the witness-stand here upon cross-examination, in response to questions that were propounded by Mr. Marquam, testify as follows, to wit: (Reads.)

“Are the answers that you gave to those questions he might have asked you written down here? Are these the answers?” referring to this written statement you have identified.

Answer. I see one place there that I didn't know that was on that paper. I don't think that I ever said that Wooldridge wanted to have sexual intercourse with Laura Herrington.

Question. No matter what you said at that time and under those circumstances. What is the fact and what is the truth; did he ever tell you that?

Answer. Never in his life.

Question. Never in his life?

Did you so testify? A. I did.

Answer. Never in his life, as I remember.”

Q. At the same time, while you were such witness, in response to questions propounded by Mr. Marquam upon cross-examination, I will ask you to state if you testified as follows, to wit: (Reads.)

“Question. What I mean to say, Mr. Rose, was there anything said by Mr. Wooldridge about his wanting to or intending to or trying to have anything to do with this girl Laura Herrington that led you to make that remark?

Answer. No. No. No.

Question. Nothing?

(Testimony of J. P. Rose.)

Answer. No. Not in my best recollection at all.

Question. Are you willing to say positively to this jury now that there was nothing said by Mr. Wooldridge [97] that caused you to make that remark as applying it to him?

Answer: I don't think that Wooldridge made any such remarks or banters to me whatever, to the best of my knowledge, that he wanted to do anything in my place at all.

Question: You are satisfied of that?

Answer: I am."

Did you so testify?

A. I did.

Mr. ROTH.—That is all.

Redirect Examination.

(By Mr. PRATT.)

Q. Mr. Rose, where were you when you signed that paper?

A. In the Marshal's office; the private office of the Marshal's office.

Q. Who all was in there with you?

A. There were about five, I guess.

Q. Can you name them?

A. Miller, Wood, McMullen and Frank Hall.

Q. Who else? J. H. Miller?

A. J. H. Miller. I said Miller, Wood.

Q. Two—Hall? A. Hall.

Q. Hall—three. A. McMullen.

Q. McMullen—four. A. And Berg.

(Testimony of J. P. Rose.)

Q. Who else? And Berg. They were all there.

A. And me.

Q. Miller is the Chief Deputy, isn't he?

A. I believe so.

Q. He asked you to make a statement about the occurrences [98] that happened in your shop that evening.

A. He did.

Q. And you were willing to do it.

A. I did.

Q. Now, Mr. Roth has asked you, put questions to you as though you asked or expected somebody to take it down; that you had dictated to him on that point.

A. They sent down to the shop for me.

Q. What about dictating that statement?

A. They got the paper and sat down and asked me if I would not give them a statement.

Q. Did you ask them to write down what you said?

A. I did not.

Q. They did that themselves.

A. They done that all themselves.

Q. And they asked you a great many questions, I suppose.

A. Yes.

Q. Eh?

A. Yes, a great many.

Q. After one part of that statement was signed, they got you to make another one and you signed that, did you?

A. How is that?

Q. After you had made a statement and it was written down and you signed it; then they wrote ahead again and you signed it again?

A. I only signed once, I believe.

Q. You signed it twice.

(Testimony of J. P. Rose.)

Mr. ROTH.—No. He didn't sign it twice.

Mr. PRATT.—You don't know what happened there yourself.

WITNESS.—Why, I didn't read it. That is sure.
[99]

Mr. PRATT.—I am talking to Roth; not to you.

Q. Ain't that your signature there on the first page? A. Yes.

Q. That is on one page. Ain't that your signature again? A. Yes.

Q. They wrote some more after that one pass at it. Now, Mr. Rose, did you read this paper that night? A. No, sir.

Q. Why didn't you?

A. I didn't have any glasses. I couldn't see it.

Q. When you were taken in there to that room to be interrogated, who, if anybody, had been in there before you to be sweated or interrogated?

A. Wooldridge.

Q. Wooldridge, he came out and he went his way.

A. We were all in there together the first time, and I went home, and they came back after me.

Q. When you made your statement, was Wooldridge there?

A. Nobody there but just the marshals and me.

Q. Those men. Well, what was done towards informing you as to what was in this paper?

A. Where? In the Marshal's office?

Q. Yes.

A. Well, they got a paper and wrote down—(Interrupted)

(Testimony of J. P. Rose.)

Q. But what was done to communicate to you what was in this paper, anything, anybody read it?

A. Oh, yes. Frank Hall read it.

Q. Frank Hall read it. Now, this language has been quoted: (Reads.) [100]

“Wooldridge asked me about Laura while I was lying on the bed and said he wanted to screw her, or words that gave me to understand that he wanted to have sexual intercourse with her.”

Q. Now, Mr. Rose, did you use any such language as that? A. I don't think so.

Q. You don't think so? A. No. No.

Q. What about that word “screw”?

A. Well, it is a word I hardly ever use. I didn't know that I ever used it.

Q. Did he say anything of that kind, of that same meaning to you there that night?

A. I don't think so. I remember the question. I don't know whether he said—asked me if he wanted to screw her. I told him, in answer to the question; I was led to believe he would do that.

Q. That is what you said?

Q. That is what ought to be on that paper.

Q. That is what you said down in the Marshal's office?

A. That is what I said down in the Marshal's office.

Q. That is what you said before the Grand Jury.

A. That is what I said before the Grand Jury.

Q. What was your information now that caused you to think so?

(Testimony of J. P. Rose.)

A. Taking into consideration the weakness of men among women.

Q. Had he ever said anything—(Interrupted)

A. No.

Q. —or done anything that would make you have a right to believe that he would have intercourse with Laura Herrington?

A. No. We talked very much about these girls racing around the streets, and so on. [101]

Q. He had known the girls from childhood.

A. He knowed them, yes, long before I did, I guess.

Q. That is what you had in mind, was it?

A. Yes.

Q. It was not that he said—

A. Not that he said. No.

Q. You heard Mr. Berg's testimony in the Commissioner's Court? A. Yes.

Q. What did he say you said?

A. When you pinned him down if he didn't say so and so, that he was led to believe that, he said that in substance that was about what it was.

Q. He said he was sitting in a hallway there, peeking through a little crack looking at Wooldridge and you. A. Yes.

Q. In your back room. A. Yes.

Q. About six or eight feet away from you. Didn't he say that? A. Yes.

Q. And that he couldn't hear but only a part of the language used. A. Yes, sir.

Q. And that as far as he knew you might have said

(Testimony of J. P. Rose.)

that up here in the Marshal's office when you were talking there.

Mr. ROTH.—That is objected to—

Mr. PRATT.—Q. That you might have said that you was led to believe that he wanted to.

Mr. ROTH.—We object—

A. Yes. [102]

Mr. PRATT.—That is all.

Recross-examination.

(By Mr. ROTH.)

Q. As I understand you, Mr. Rose, you deny that you told Mr. Miller, at the time that this statement was written down, that Wooldridge had asked you about Laura while you were lying on the bed and said that he wanted to screw her, or words that gave you to understand that he wanted to have sexual intercourse with her. You deny making that statement to Joe Miller there in the presence of those persons that were named.

A. I don't have any recollection of that being in there at all.

Q. But you deny making that statement, do you?

A. That statement—it is as near a denial of it as I can make, and be honest.

Q. Do you deny that Frank Hall read that to you; that Frank Hall read that language to you when he read it?

A. If he read it I didn't understand it that way.

Q. Do you deny that he read it to you?

A. He read the paper, whether he read it all or not.

(Testimony of J. P. Rose.)

Q. Do you wish to be understood as swearing that you didn't hear him read that part of it to you?

A. The part that is there that Wooldridge told me that he wanted to screw her, I deny making that statement.

Q. And you deny Frank Hall read that part of it to you when he read it.

A. I deny hearing Frank Hall mention that when he read that paper.

Q. You would not have signed it if he had read that. A. What? [103]

Q. You would not have signed it if he had read that? A. No, sir; I wouldn't.

Mr. ROTH.—That is all.

Mr. PRATT.—That is all.

Stipulation Re Filing of Indictment.

(Stipulated between attorneys for plaintiff and defendant that the indictment in the Wooldridge case was returned on the 18th day of February, and was filed on the 19th day of February; and further stipulated that the indictment in this case against J. P. Rose was filed March 2d; that the bench warrant is dated the 27th day of March, and was served on the 27th day of March; and that Mr. J. P. Rose testified in the case of United States vs. Wooldridge on March 9th.)

Testimony of J. J. Patton, for Defendant.

J. J. PATTON, a witness for defendant, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. PRATT.)

Q. State your name, age, and place of residence, to the jury.

A. My name is J. J. Patton; residence Seventh and Barnette street; and within two days of 43 years of age.

Q. You are the pastor here of the Methodist Episcopal Church, are you not? A. I am.

Q. How long have you lived in this community?

A. About two and a half years.

Q. During that time have you known a girl by the name of Grace Carey? A. I have.

Q. Do you know her when you see her? A. I do.

Q. Do you know what her general moral character is as made up from general reputation on that subject? [104]

(Plaintiff objects as irrelevant, incompetent and immaterial. Jury withdraws, pending argument, in charge of bailiffs, after receiving the usual admonitions. After argument, the jury return into Court.)

The COURT.—Objection sustained.

(Defendant excepts, and is allowed an exception.)

Mr. PRATT.—That is all, Mr. Patton.

(Trial continued until 10 A. M. to-morrow morning, and the jury withdraw in charge of the bailiffs, after receiving the usual admonitions. And, at

10 A. M. April 4, 1916, the defendant and his attorney and the district attorney and the jury are present, and the trial proceeds.)

Testimony of Andrew Anderson, for Defendant.

ANDREW ANDERSON, a witness for defendant, after being duly sworn, testified as follows, to wit:

Direct Examination.

(Mr PRATT.)

Q. Mr. Anderson, you reside here in Fairbanks?

A. I do.

Q. How long have you lived here?

A. It will be eight years the 5th of July, the coming July.

Q. What line of business have you followed?

A. Laundry business.

Q. Still in that business, are you? A. Yes.

Q. Do you know J. P. Rose, the defendant?

A. I do.

Q. How long have you known him?

A. For a number of years.

Q. Where is your place of business with reference to his, where he is now located?

A. His business is between First and Second Avenues on [105] Lacey Street, and our business is on the corner of Second Avenue and Lacey Street.

Q. Very far away from him?

A. Something like about two hundred feet.

Q. Have you had occasion to be in his shop, or by his shop, frequently or otherwise?

A. A number of times.

(Testimony of Andrew Anderson.)

Q. Been in his shop? A. A number of times.

Q. Have you had occasion to notice the fact that boys and girls and women are in that shop frequently in the matter of getting repairs for skates, bicycles, sewing-machines, and such as that?

(Objected to by plaintiff. Objection overruled.)

A. I have seen boys and men there, but I never saw any women there that I recollect.

Q. Girls, young girls?

A. I never saw any girls there.

Q. You never noticed any there?

A. I never noticed any girls.

Q. Mr. Anderson, do you know—I believe you said you have known Mr. Rose all the time you have lived here. A. About six years.

Q. I will ask you if you know, first—that can be answered by yes or no—if you know what his general reputation in this community is for chastity?

(Plaintiff objects as irrelevant, incompetent and immaterial, and after argument withdraws the objection.)

A. It is good. [106]

Q. The first question is: Do you know?

The COURT.—Do you know what his reputation is? Answer the question by yes or no.

A. I do.

Mr. PRATT.—Q. What is that reputation—good or bad?

A. It is good always. I know him to be—always to be good.

Mr. PRATT.—You may cross-examine the witness.

(Testimony of Andrew Anderson.)

Cross-examination.

(By Mr. ROTH.)

Q. When did you first find out that Mr. Rose's reputation for chastity was good?

A. I never know anything else.

Q. When did you first find out that it was good? You say now that it is good positively. When did you first learn that his reputation for chastity was good?

A. I don't know how to answer you that. I always know him to be a good man, in good standing in the community.

Q. We are not talking about that. You understand that your answer is directed to the question of chastity. You know what chastity means, do you? What does chastity mean?

A. I can't find a word for it.

Q. What do you think it means?

A. It means good morals.

Q. In what particular? A. In any line.

Q. In any line? A. Yes.

Q. That is your understanding of chastity?

A. Yes. [107]

Q. A man, according to that, may be a first-class man, morally, in your opinion, and once in a while have sexual intercourse with a woman that is not his wife. A. I don't think so.

Q. That wouldn't necessarily take away his chastity from him, would it? A. I think it would.

Q. Oh, you think it would? A. Yes.

Q. Well, if a man stole some money, would that

(Testimony of Andrew Anderson.)

take away his chastity? A. Why, certainly.

Q. That is your understanding now of the word "chastity"? A. Yes.

Q. If he had stolen money it would take it away from him quicker than if he, once in a while, had sexual intercourse with a woman that was not his wife, would it? In your opinion, if he is an unmarried man who had sexual intercourse with a woman, why it wouldn't take his chastity away as quickly as if he stole money, would it?

A. I think it would. Q. You think it would?

A. Yes.

Q. You think they are both just the same in that respect? A. I do as far as I understand now.

Q. You are a Christian gentleman?

A. Yes, sir. I do—I am.

Q. You are a member of the Methodist Church here? A. I am. [108]

Q. One of the officers of the church? A. I am.

Q. Now, whoever told you that Mr. Rose was a chaste man?

A. I don't understand that, Mr. Roth.

Q. Whoever told you, or whoever did you hear say that Mr. Rose is a chaste man?

A. I can't answer that.

Q. You are very much opposed to these prosecutions, aren't you, in these rape cases?

A. I am not.

Q. Haven't you taken a positively active interest in it, yourself?

A. As far as any citizen would do, I was interested in it.

(Testimony of Andrew Anderson.)

Q. Haven't you in at least one of these cases contributed money for the defendant in one of these rape cases? A. I have.

Q. Haven't you been spending a lot of time—(Interrupted.) A. Some.

Q. —fighting these cases. Haven't you?

A. I don't consider it fighting them.

Q. Haven't you stated publicly in the restaurants in this town, or at least at one time in a restaurant in this town, that these prosecutions were being made on account of bitterness of the Marshal's office and the District Attorney's office, and that these prosecutions were a job?

A. I don't remember I have done that.

Q. Didn't you, in the presence of Axel Carlstein and Edward Morrissey, down here in the Arcade Restaurant one morning at breakfast, at the lunch counter, state that these prosecutions were being brought about on account of spite [109] and malice by the Marshal's office and the District Attorney's office; didn't you say that?

A. There was a number of fellows—(Interrupted.)

Q. Answer that question yes or no. Did you or did you not state that?

A. I probably agreed to it.

Q. Didn't you state what I am telling you?

A. I might have agreed to it.

Q. But did you not yourself state that these prosecutions were a job?

A. I might have done it. I don't know. I don't remember.

Mr. ROTH.—That is all.

Mr. PRATT.—That is all.

Testimony of William H. McPhee, for Defendant.

WILLIAM H. MCPHEE, a witness for defendant, testified as follows, to wit:

Direct Examination.

(By Mr. PRATT.)

Q. Mr. McPhee—

A. Speak louder, Judge, because I can't hear unless you do.

Q. You live here in Fairbanks? A. Yes, sir.

Q. How long have you lived here?

A. About eleven years, I think.

Q. Do you know Mr. Rose sitting here?

A. I have.

Q. Does he rent a shop from you?

A. Yes, sir.

Q. In the Washington Block? How long has he been a tenant [110] there in that building, the Washington Block?

A. I couldn't say exactly. Something between three and four years.

Q. Have you known him well during that time?

A. I have seen him most every day in that time.

Q. Have you been in his shop frequently?

A. Lots of times.

Q. And by there? A. Lots of times.

Q. Have you noticed the kind of customers he has there, whether they are boys and girls and women or not?

(Testimony of William H. McPhee.)

A. Boys, girls, women and men. I have seen them all there.

Q. You have been in there when they have been in there, the boys and girls and women?

A. Hundreds of times.

Q. You have had occasion then to notice his deportment and dealings with girls and women, have you?

A. I have seen him many's the time helping little girls to start off riding on their bicycles, and I never saw anything but what was proper and right of any kind.

Q. Mr. McPhee, do you know what Mr. Rose's general reputation in this community is as to being a chaste man, that is, a man who deals kindly and respectfully with girls and women?

(Plaintiff objects as irrelevant, incompetent and immaterial; that the interpretation that he puts upon the word "chastity" is not a proper meaning or definition of the word. Objection sustained.)

Q. Do you know what his general reputation in this community [111] is as to chastity?

A. It has been good. I never heard a word said against the man in any way until this scrape came up.

Mr. PRATT.—You may cross-examine.

Cross-examination.

(By Mr. ROTH.)

Q. Mr. McPhee, do you understand the question that was asked you? A. Yes, sir.

Q. That his reputation is good for chastity?

(Testimony of William H. McPhee.)

A. Well, good in a business way.

Q. No, no, no. That was not the question. The question was chastity.

A. I don't know as I know the meaning of the word chastity.

Q. Don't you know the meaning of chastity?

A. I don't believe I do, to give it a definition.

Q. You answered it here and your answer is of record. You answered a question then that you don't know anything about.

A. Well, probably you can take it that way.

Q. Well, chastity means virtuous on the ground of having sexual intercourse with women.

A. What the devil do I know about that.

Q. You don't know what his reputation about having sexual intercourse with women is?

A. I don't know nothing about that at all.

Mr. ROTH.—That is all. [112]

Redirect Examination.

(By Mr. PRATT.)

Q. Did you ever hear him criticised or discussed?

(Plaintiff objects as irrelevant, incompetent and immaterial.)

The COURT.—Mr. Pratt, when a witness says he doesn't know what chastity is, or "what the devil does he know about it," I do not think any further questions on that proposition are necessary.

Mr. PRATT.—That is all.

Testimony of F. Bishoprick, for Defendant.

F. BISHOPRICK, a witness for defendant, after being duly sworn, testified as follows:

Direct Examination.

(By Mr. PRATT.)

Q. You live here in town? A. I do.

Q. You are a merchant here, are you?

A. Yes, sir.

Q. How long have you been in that line of business here in town? A. About five years.

Q. Where has your place of business been located with reference to Mr. Rose's shop?

A. I have been located in the McPhee building and in that neighborhood.

Q. Do you know Mr. Rose? A. Yes.

Q. Do you know where his place of business is?

A. I do. [113]

Q. Do you pass there frequently?

A. Quite so. Yes.

Q. Pretty much every day, don't you?

A. Every day.

Q. Have you noticed the class of customers that he has, that is, whether young people, girls and boys and women? A. Yes.

Q. Have you noticed them there? A. Yes.

Q. Have you been in there frequently?

A. Yes.

Q. Now, Mr. Bishoprick, you understand the meaning of the word chastity, don't you?

A. I do.

(Testimony of F. Bishoprick.)

Q. Do you know what his general reputation for chastity is in this community?

A. I never heard anything against it.

The COURT.—The question is: Do you know. You can answer that by yes or no, Mr. Bishoprick.

Mr. PRATT.—Q. Do you know?

A. Well, I—Yes.

Q. What is that reputation, good or bad?

A. It is good, as far as I know.

Mr. PRATT.—Cross-examine.

Cross-examination.

(By Mr. ROTH.)

Q. You never heard anything, one way or the other, about Mr. Rose's chastity, did you, one way or the other? A. I never did.

Mr. ROTH.—That is all. [114]

Testimony of Thomas Kiel, for Defendant.

THOMAS KIEL, a witness for defendant, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. PRATT.)

Q. Mr. Kiel, you live here in Fairbanks?

A. Yes, sir.

Q. You are engaged in the tent and awning business, are you not? A. Yes, sir.

Q. How long have you been in that line of business here in Fairbanks?

A. Fairbanks, I have been here since 1908.

Q. Have you known Mr. Rose since that date?

A. Not quite since that date, but about a year later.

(Testimony of Thomas Kiel.)

Q. You have known him all the time since?

A. Yes, sir.

Q. Where has your place of business been with reference to his place of business for the last three or four years, that is, since he has had his shop in the Washington Building?

A. The first two years, his door was within about four or five feet of mine, his back door within about four or five feet of my door; since then he has been across the street from me.

Q. You are now in the Vachon Building.

A. Yes, sir.

Q. Have you had occasion, during the last three or four years, to know the kind of customers that he has there, that is, whether they were boys, young people, boys, girls and women? [115]

A. Yes, sir.

Q. As well as men? A. Yes, sir.

Q. You noticed all of them? A. Yes, sir.

Q. You have been in there frequently?

A. Very frequently.

Q. Have you noticed his treatment and demeanor toward women? A. I have.

Q. And girls? A. I have.

Q. Now, Mr. Kiel, you know the meaning of the word chastity, don't you? A. Well, I do. Yes.

Q. Do you know what Mr. Rose's general reputation in this community is with reference to chastity?

A. Yes, sir.

Q. What is that reputation; good or bad?

A. It is good.

(Testimony of Thomas Kiel.)

Mr. PRATT.—Cross-examine.

Cross-examination.

(By Mr. ROTH.)

Q. What is Mr. Rose's business?

A. He repairs bicycles, sewing machines, etc., guns, phonographs.

Q. You have seen a great many young girls at his shop, haven't you? A. I have.

Q. Every day? A. Every day. Lots of them.

Q. What were they doing there? [116]

A. Most of them came there with bicycles to be repaired and other little odd jobs, sent there by their parents, I presume.

Q. Lots of them go there without anything to do too, don't they? A. That I couldn't tell you.

Q. You have been in that shop?

A. I have been in that shop lots of times.

Q. And seen little girls come in there without any business?

A. Seen them around there, usually with bicycles or something of that kind.

Q. You have seen them come in without any business? A. That I couldn't tell you.

Q. You can't tell that? A. I cannot.

Q. Now think. A. I can't tell you.

Q. That has been a kind of headquarters for children? A. I presume it is, boys and girls.

Q. Yes. Boys and girls, and girls without boys, and boys without girls? A. Yes.

Q. You have seen girls in there alone?

A. Lots of times.

(Testimony of Thomas Kiel.)

Q. Without any apparent business?

A. Whether they were on business or not, I don't know.

Q. They were very familiar around there, were not they?

A. I have seen lots of kids playing around there.

Q. How do you know his reputation for chastity is good?

A. Because I never heard it criticised in any way, and I know [117] the man pretty well, myself.

Q. Do you think that your knowledge of the man would be such that you would know that he wouldn't have sexual intercourse with a woman?

A. I couldn't tell you that. Of course, I suppose it is natural for a man to have sexual intercourse with a woman, but I don't think—my knowledge is such of Mr. Rose that I don't think he would do it illegally.

Q. You know he is not married? A. I do.

Q. All right. Then you believe that he does have sexual intercourse? A. I can't say.

Q. You say you would naturally suppose that his human nature would call for that?

A. I said, naturally I supposed it would, but whether it would or not I am not prepared to say.

Q. Why do you swear here that his reputation for chastity is good, and you say you know the meaning of the word "chastity"?

A. Because I never heard anyone criticise his reputation.

Q. Don't you know that if he would go down and

(Testimony of Thomas Kiel.)

have sexual intercourse with a prostitute on the "Row" that he would be unchaste?

A. I presume he would.

Q. Now, you say your knowledge of him leads you to believe that he is chaste? A. Yes, sir.

Q. Then you don't believe that he does have sexual intercourse with anybody? [118]

A. I am not saying that I don't believe. I am stating as far as my knowledge goes.

Q. You say you know what his reputation is, and you speak from your knowledge of the man?

A. I am not supposed to know anything about his personal or private affairs, no more than this; I am speaking simply from what I know of Mr. Rose and what I have seen of him.

Q. Don't you know, Mr. Kiel, that it would be a remarkable thing if anybody knew whether or not a man was chaste? Don't you know that?

A. It probably would.

Q. Don't you know that when a man states under oath that he believes that a man is chaste, that he is kind of stretching the proposition a little bit?

A. Well, I don't think he is.

Q. Do you suppose that if a man is having sexual intercourse with a woman or with a child that he is going to tell you about it?

A. It is not very likely.

Q. Do you suppose he is going to tell anybody about it? A. It is not very likely he will.

Mr. ROTH.—That is all.

Mr. PRATT.—That is all.

Defendant rests. [119]

**Testimony of Frank B. Hall, for Plaintiff (In
Rebuttal).**

FRANK B. HALL, a witness for plaintiff in rebuttal, after being duly sworn, testified as follows:

Direct Examination.

(By Mr. ROTH.)

Q. Mr. Hall, what was your official position on the 15th day of February, of this year?

A. Deputy United States Marshal.

Q. Did you hold any other official title?

A. That of Notary Public.

Q. I will show you a paper here, Mr. Hall, which is marked Plaintiff's Exhibit Number 1 in the case of the United States against Wooldridge, and ask you to state whether or not that is your signature attached to that as a notary.

(After a discussion, Mr. Pratt, for defendant, states as follows: "His (Mr. Roth's) questions to Mr. Rose were on a collateral matter, and he is bound by Rose's answers, and he cannot dispute him by testimony in rebuttal. That is the universal rule, and I object to this testimony on that ground." Objection overruled. Defendant excepts, and is allowed an exception.)

A. It is.

(Defendant moves to strike out the answer. Motion denied. Defendant excepts and is allowed an exception.)

Q. Mr. Hall, what is that paper?

A. That is a statement made by J. P. Rose, written

(Testimony of Frank B. Hall.)

down by Chief Deputy Marshal Miller, in the presence of Mr. Miller, Mr. Rose, deputy marshals McMullen, Wood, Berg and myself.

Q. Was it sworn to? A. It was. Yes, sir.

Q. Before whom?

(Defendant objects as irrelevant, incompetent and immaterial. Objection overruled.)

Q. Just tell this jury how that was written?
[120]

(Defendant objects.)

Q. Who dictated it and how it was written. Just exactly how it was written.

(Defendant objects.)

Q. Just state exactly how that paper was made.

(Defendant objects. Objection overruled.)

Q. Tell the jury exactly how that was made.

A. Mr. Rose told the statements that are written down here.

(Defendant objects, that that is not the question, and Mr. Roth states that it is, and the Court directs the witness to proceed with his statement.)

A. And as he spoke, Chief Deputy Marshal Miller wrote them down, and when he would get probably to the end of a paragraph, he would read it over again to Mr. Rose; then he would say, "Go on," and Mr. Rose would recite some more and Mr. Miller would take it down, and it is all in long hand—

Q. Yes?

A. —so it was written down carefully; and when the instrument was completed, Mr. Miller passed it to Mr. Rose and asked him to read it. Mr. Rose

(Testimony of Frank B. Hall.)

took the paper and then said he didn't have his glasses and couldn't read it. Then Mr. Miller passed it to me and said; "You read it to Mr. Rose," which I did; and, after I had read it to Mr. Rose, Mr. Rose said; "Yes, that is right. That is exactly what I want to say."

Q. Did you read everything that was in there to him? A. Positively everything.

Q. Now, I want to call your attention to one specific part of this—(Interrupted.)

The COURT.—I think I anticipate the question which you are going to ask. This witness is on the stand to show just exactly how that was written down, and not for the contents. [121]

Mr. PRATT.—I object to any further testimony.

Mr. ROTH.—Q. Did Mr. Rose at that time object or dispute any part of that statement as you read it to him?

(Defendant objects as irrelevant, incompetent and immaterial. Objection overruled.)

A. He did not.

Mr. ROTH.—That is all.

Mr. PRATT.—No questions. [122]

**Testimony of J. H. Miller, for Plaintiff (In
Rebuttal.)**

J. H. MILLER, a witness for plaintiff in rebuttal, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. What official position did you hold on the 15th

(Testimony of J. H. Miller.)

day of February, 1916?

A. Chief office deputy in the Marshal's office of the Fourth Division.

Q. Are you acquainted with the defendant, J. P. Rose? A. I am.

Q. Did you see him in the evening of the 15th day of February, 1916? A. I did.

Q. I will show you a paper which is marked Plaintiff's Exhibit 1 in the case of the United States against Wooldridge, and ask you to state if you know in whose handwriting that paper is?

A. That is in my handwriting, the body of it.

Q. Where did you do that writing?

A. In the Marshal's office.

Q. Tell this jury exactly how you wrote that document.

(Defendant objects as incompetent, irrelevant and immaterial, being upon an immaterial point, on another proposition entirely, something that plaintiff didn't inquire into of Mr. Rose, and that something that all he said concerning was in response to questions asked on cross-examination, and, being collateral, his answers are binding on the government. Objection overruled. Defendant excepts and exception allowed.)

A. You asked me how I came to write this.

Mr. ROTH.—Yes. How it was written.

The COURT.—Not how you came to write it, but how it was written. [123]

A. It was written with a lead pencil.

Mr. ROTH.—Q. All right. Did you get the mat-

(Testimony of J. H. Miller.)

ter out of your own head or where did you get the subject matter; how did you come to write that down?

A. Why, I came to write it down from a statement made by Mr. Rose.

Q. When was the statement made?

A. The statement was made in the evening of the 15th.

Q. Was that statement made any time before you wrote it down, or how did you come to write it?

A. I asked Mr. Rose for a statement of what transpired up there in his building, and, in answer to that, he made the statement which I wrote down here.

Q. Did he make it as you wrote it down?

A. As I wrote it down, and as I would write part of it, I would read it back to him and ask him if it was what he wanted to say, and he said it was; and he would make another statement, and I would write that down and read it back to him.

Q. All right.

A. Then I went on until I finished the whole thing; then I handed it to him and asked him to read it, and he said that he didn't have his glasses with him, and I handed the statement then to Frank Hall, who was present, and asked him to read it, and he read it to Mr. Rose.

Q. Did Frank Hall read everything that was in it?

A. I believe he did. He read the statement just as I handed it to him.

(Testimony of J. H. Miller.)

Q. What did Mr. Rose say about it, if anything?

A. Mr. Rose said that that was correct; that was what he wanted to say. And I asked him if he was willing to swear to it, [124] and he said he was, and I had Mr. Hall swear him to it.

Mr. ROTH.—You may cross-examine.

Cross-examination.

(By Mr. PRATT.)

Q. Mr. Miller, you went down or sent down to his shop for him and fetched him up there? A. Yes.

Q. It was that night? A. Yes, sir.

Q. Nine or ten o'clock?

A. I don't know just the time Mr. Rose came. I think it was between eight-thirty and ten o'clock.

Q. You had had Mr. Wooldridge in and examined him before you sent for Rose?

A. I had them all in there together,—Mr. Rose, Wooldridge and the girl.

Q. Then Mr. Rose went home, back to his shop.

A. Yes. Before he went back to his shop he wanted to talk to me some, but I didn't have any talk with him at that time.

Q. Didn't he go back to his shop? A. Yes.

Q. You then proceeded to examine Wooldridge alone? A. No, sir.

Q. You didn't examine Wooldridge in the presence of Rose? A. I did.

Q. You did?

A. In the presence of Rose and Laura Herrington and some of the deputies.

(Testimony of J. H. Miller.)

Q. Then Rose went home. A. Yes. [125]

Q. Then you sent for him? A. I did.

Q. How long after that did you send for him?

A. Probably fifteen or twenty minutes.

Q. Now, before that, earlier in the evening, you and Berg and John C. Wood, you got into a hallway there next to his bedroom where his bed is, and cut a hole through the canvas—Berg did, at least, and he peeked through there, and you and Wood were listening. A. No, sir.

Q. And Berg said he was listening.

A. No. You are wrong. I wasn't there at all at that time.

Q. You were not there during that time?

A. I was there during the afternoon, but not in the evening. It was just Wood and Berg that were present there in the evening.

Q. They were there in the evening. A. Yes.

Q. They had gum shoes?

A. They had rubbers, I suppose.

Q. They had gum shoes?

A. Why, we all had rubber shoes on.

Q. You all three had gum shoes on.

A. Yes, sir.

Q. A very thin partition between where you and Wooldridge and Rose were talking?

A. I wasn't there at that time.

Q. Now then, when you sent for Rose after you had dismissed Wooldridge, and got him up there, he was somewhat agitated, wasn't he? [126]

A. No, sir.

(Testimony of J. H. Miller.)

Q. He wasn't? There were five of you there.

A. I don't remember just how many, three or four or five.

Q. In there by yourselves? A. Yes, sir.

Q. All deputy marshals?

A. Yes, sir, except Mr. Rose.

Q. Then you asked him to make a statement.

A. I did.

Q. About what transpired that evening in his shop as between him and Wooldridge?

A. Yes, sir.

Q. And he was willing to make it? A. He was.

Q. And you did the writing? A. I did.

Q. And after you had written everything that he said, he signed it? A. Yes, sir.

Q. He only signed it once, did he?

A. I am not sure whether he signed both pages, or signed one, at the end. I don't know without looking.

Q. Look and see if you didn't write one page and he signed that, and then you wrote another page—
(Interrupted.)

A. I think I had him sign both pages. (Examines said paper.) Yes. Both pages are signed.

Q. But on different subjects—the matters on both pages?

A. I don't know. It was the whole subject on pages that were not attached. A signature on one page wouldn't mean anything [127] as to the other.

Q. When you got the first page written, didn't

(Testimony of J. H. Miller.)

you hand the statement to him and have him sign it?

A. No. There was not any signing done until after the whole thing was finished.

Q. Didn't he sign the first page after you had written that first page? A. No, sir.

Q. Didn't Berg interrupt during the time he was making the statement and say; "Now, Rose. You are lying. You are lying." A. No.

Q. Didn't that happen a couple of times?

A. It did not.

Q. It didn't? A. No, sir.

Q. Now, you know there are two statements, two clauses in that; one very plain, and the other modifying it a great deal, upon the subject of what Wooldridge told Rose. You know that. You can see that by looking at it.

A. I don't know just the wording of it, now.

Q. There is one clause that is very plain; that Wooldridge told him that he wanted to do so and so to that girl? A. Yes.

Q. And the other is; "That he gave me to understand."

A. It was just as Mr. Rose stated it, whatever it was.

Q. You got it both ways. Didn't you do that so that afterwards when you got him before the Grand Jury, if you couldn't get him to agree to those words, you would do the best you could and get him to agree to that second one?

A. No. I never thought of evidence in my mind. The only thing [128] in that statement is just

(Testimony of J. H. Miller.)

exactly what Rose said, and I put it down exactly as he said it.

Q. You have told this jury that Rose couldn't read that himself?

A. He said he didn't have his glasses.

Q. He didn't read it, did he?

A. No. I didn't know he couldn't read it.

Q. You know he didn't read it?

A. I know I handed it to him to read.

Q. You know he didn't read it?

A. Yes, sir.

Q. And the reason he gave was that he didn't have his glasses with him and he couldn't read it?

A. Yes, sir.

Q. Now, you have told this jury that you thought Frank Hall read every word of it to him?

A. Yes. I said I believed he had.

Q. You believed he had? A. Yes.

Q. You could possibly be a little mistaken about that?

A. I could be mistaken, the same as any other mortal.

Mr. PRATT.—That is all.

Mr. ROTH.—That is all. The Government rests.

Mr. PRATT.—We rest.

TESTIMONY CLOSED. [129]

The case was argued to the jury by the attorneys for the respective parties, and the Court read written instructions to the jury, which written instructions are as follows: [130]

[Title of Court and Cause.]

Instructions to the Jury.

GENTLEMEN OF THE JURY:

1.

The defendant, J. P. Rose, is accused by the Grand Jury of the crime of rape, and is now on trial before you. The indictment charges that the said J. P. Rose, on the first day of June, 1913, at Fairbanks, in the Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, and within the jurisdiction of this Court, did then and there wilfully, unlawfully and feloniously, carnally know and abuse one Grace Carey, a female child, then under the age of sixteen years, to wit: of the age of twelve years, he, the said J. P. Rose, then and there being a male person over the age of twenty-one years.

2.

The defendant has entered a plea of not guilty, and such plea controverts and denies each and every essential element of the crime charged in the indictment, and places the burden upon the prosecution of proving each such element beyond a reasonable doubt, before you can find the defendant guilty of said crime so charged.

3.

You are instructed that in this case the jury and the Judge of this court have separate functions to perform; It is the duty of the jury to hear all the evidence in the case, all of which is addressed to you, and to decide thereupon all questions of fact.

It is the duty of the Judge of this court to instruct you upon the law applicable to the evidence and facts in this case, and the [131] law makes it your duty to accept, as law, what is laid down as such by the Court in these instructions. And you are instructed that these instructions are to be taken and considered by you together as a whole.

4.

You are instructed that the Indictment in this case is a mere accusation, and is not, in itself, any evidence of the defendant's guilt.

5.

The defendant is presumed to be innocent of the crime charged against him in the Indictment until he is proven guilty, beyond a reasonable doubt, by the evidence produced in this case and submitted to you, and this presumption of innocence is a right guaranteed to the defendant by the law and remains with him and should be given full force and affect by you until such time, in the progress of the case, as you are satisfied of his guilt, from the evidence, beyond a reasonable doubt. The presumption of innocence is not a mere form, to be disregarded at pleasure, but it is an essential and substantial part of the law of the land, and binding on the jury in this case, as in all criminal cases.

6.

The term "reasonable doubt" as defined by the law and as used in these instructions, means that state of the case which after a careful comparison and consideration of all the evidence in the case, leaves the minds of the jury in that condition that they

cannot feel an abiding conviction amounting to a moral certainty of the truth of the charge. The term "reasonable doubt" does not mean any doubt, but such doubt must be actual and substantial as contradistinguished from mere vague apprehension, and must arise from the evidence, or from a want of evidence, or from both such sources.

A reasonable doubt is not a mere whim, but is such a doubt [132] as arises from a careful and honest consideration of all the evidence in the case; and the evidence is sufficient to remove all reasonable doubt when it convinces the judgment of ordinarily prudent men of the truth of a proposition with such force that they would act upon the conviction without hesitation in their own most important affairs.

Proof beyond a reasonable doubt does not mean proof beyond any doubt.

7.

You should not consider any evidence sought to be introduced but excluded by the Court, nor should you consider any evidence that has been stricken by the Court from the record, nor should you take into account, in making up your verdict, any knowledge or information known to you not derived from the evidence given upon the witness-stand.

8.

The jury are instructed that they are the sole judges of all questions of fact in this case, and they should determine the same from the evidence in the case. But your power in this connection is not arbitrary, but is to be exercised by you with legal discretion and in subordination to the rules of evidence

laid down in these instructions.

9.

In considering the evidence in this case, you are not bound to find a verdict in conformity with the declarations or testimony of any number of witnesses when their evidence does not produce conviction in your minds, against a lesser number of witnesses, or other evidence, which is satisfying to your minds.

10.

In determining the credit you will give to a witness and the weight and value you will attach to his testimony, you should take into account the conduct and appearance of the witness upon the stand; the interest he has, if any, in the result of the trial; the motive he has in testifying, if any is shown; his relation to [133] or feeling for or against any of the parties to the case; the probability or improbability of such witness' statements; the opportunity he had to observe and to be informed as to matters respecting which he gave testimony before you, and the inclination he evinced, in your judgment, to speak the truth or otherwise as to matters within the knowledge of such witness. It is your duty to give to the testimony of each and all of the witnesses appearing before you such credit as you consider the same justly entitled to receive.

And, in this connection, you are instructed that evidence is to be estimated not only by its intrinsic weight, but also according to the evidence which it is within the power of the one side to produce, and of the other to contradict; and, therefore, if the

weaker and less satisfactory evidence is offered, when it appears that stronger and more satisfactory evidence is within the power of the party offering the same, the evidence so offered should be viewed with distrust.

11.

You are instructed that if you find that any witness has wilfully testified falsely in one part of his testimony in this case, you may distrust any part, or all, of the testimony of such witness. And, if you believe from the evidence that any witness appearing before you in this case has wilfully testified falsely, you are at liberty to reject the entire testimony of such witness; but you are not bound to reject the entire testimony of a witness because he has testified falsely in some part of his testimony, you should reject the false part, and should give to the other parts such weight as you may deem they are justly entitled to receive.

The foregoing instruction is applicable to female as well as male witnesses, also the same is to apply to No. 10.

You should not fail to weigh and consider fairly and give proper effect to all testimony which you consider truthful.

12.

You are instructed that a person charged with the commission [134] of a crime shall, at this own request, but not otherwise, be deemed a competent witness in his own behalf,—the credit to be given to his testimony being left solely to the jury under the instructions of the court.

You are instructed that, in this case, the credit to be given to the testimony of the defendant, J. P. Rose, who has appeared at his own request as a witness before you, is left solely to you, and you should give to it the same fair and candid consideration you do to the testimony of other witnesses in the case, but you are entitled to take into consideration the interest of the defendant in the result of the trial, as affecting his credibility.

13.

You are instructed that the question of punishment is reserved for the court, and that the jury have nothing to do with that branch of the case, and are not to consider the same.

It is for you to determine solely whether or not the defendant is guilty of the crime charged in the indictment. The matter of the form and severity of the punishment, in the event of conviction, is to be left to the discretion of the Court.

14.

You are instructed that whoever has carnal knowledge of a female person, forcibly and against her will, or, being sixteen years of age, carnally known and abuses a female person under sixteen years of age, with her consent, is guilty of rape.

15.

The intent to have sexual intercourse, where the female is under the age of consent, is an essential element in the crime, and must be proven beyond a reasonable doubt; and this may be done by proof of any facts or circumstances tending to show such intent. In this case, it is also essential that the

Government prove, beyond a reasonable doubt, that the act of sexual intercourse charged in the indictment was committed during the month of July, 1913, and about three weeks prior to the 24th day of said month. [135]

16.

You are instructed that, to constitute the crime of rape, it is necessary that penetration be shown, and, if penetration be shown to have actually taken place as a matter of fact, the degree of penetration is immaterial.

Penetration, as herein used, means the penetration of the female organ of a female with the male member or penis of a male.

17.

You are further instructed that it is the policy of our law, as expressed in the statute, that any female under the age of sixteen years shall be incapable of consenting to the act of sexual intercourse, and that anyone committing the act with a girl within that age shall be guilty of rape, notwithstanding he obtained her consent thereto; and whether the girl in fact consented or resisted is immaterial in this case.

In this case neither the element of force nor the question of consent has any application. The witness, Grace Carey, could not consent, and the law resists for her.

18.

The Government would not be required to show the age of Grace Carey by a family record or any instrument; such proof may be made by oral testimony of witnesses, and the said Grace Carey is a compet-

ent witness as to her age, and such testimony may be based upon information with respect thereto, if any she may have from her parents.

19.

The jury are instructed that evidence has been introduced on the part of the prosecution for the purpose of proving that at another time, prior to the time about three weeks before the 24th day of July, 1913 when the alleged offense upon which they rely for a conviction is charged to have occurred, the defendant had sexual intercourse with the witness, Grace Carey; and the jury [136] are further instructed that they cannot convict the defendant for such previous offense, although you may believe beyond a reasonable doubt that it occurred as testified to by the witness, Grace Carey, for the reason that the defendant is not upon trial for that offense,—the only purpose for which you can consider such evidence, if you believe the same to be true, is upon the question of the design or intent of the defendant, and as hearing upon the likelihood or probability of the defendant having committed the offense charged in the indictment, and for no other purpose.

20.

The jury are instructed that while it is a rule of law that the prosecution is not bound to prove the crime alleged in the Indictment, to have occurred upon the day set forth in the Indictment, but may prove it to have occurred at any time within three years prior to the date of the finding of the indictment, nevertheless, where, as in this case, the prosecution has elected to prove an offense at another

time, to wit, in the month of July, 1913, and about three weeks prior to the 24th day of said month of July, it is bound to prove to your satisfaction, beyond a reasonable doubt, that such offense was committed by the defendant at the time and place testified to by the witnesses in this case, before you can find the defendant guilty.

21.

You are instructed that if you believe from the evidence in this case, beyond a reasonable doubt, that the defendant J. P. Rose, being then and there over the age of twenty-one years, at Fairbanks in the Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, in the month of July, 1913, and about three weeks prior to the 24th day of said month, did have carnal knowledge of Grace Carey and did penetrate the female organ of Grace Carey with his male member or penis, and that said Grace Carey was then and there a female person under the age of sixteen years and was not then and there the wife of the defendant, J. P. Rose, you will find the defendant guilty of the crime of rape, as charged in the indictment. [137]

22.

You are instructed that in the case of rape it is not essential that the one upon whom the rape is alleged to have been committed should be corroborated by the testimony of other witnesses as to the particular act constituting the offense; and if the jury believe, beyond a reasonable doubt, from the testimony of the witness, Grace Carey, that the defendant did commit the crime as charged, the law

would not require that the witness, Grace Carey, should be corroborated by other witnesses as to what transpired at the immediate time and place when it is alleged the crime was committed, but such uncorroborated testimony should be viewed with caution.

23.

You are instructed, gentlemen of the jury, that if you believe and find from the evidence that, at the time it is charged that the defendant committed the crime of rape, he was a man whose reputation for chastity in the community in which he lived was good, then you should take such good reputation into consideration in passing upon the question of his guilt or innocence, for the law presumes that a chaste man is less likely to commit a sexual crime than one who is not chaste. If, however, upon a consideration of all the evidence in the case, you believe him to be guilty, beyond a reasonable doubt, you should not acquit him solely upon the ground of his good reputation for chastity, if you find the same to have been proved.

24.

The charge of rape against a person is easy to make, difficult to prove and more difficult to disprove, and in considering a case of this kind, it is the duty of the jury to carefully and deliberately consider, compare and weigh all the testimony, facts and circumstances bearing on the acts complained of, and the utmost care, intelligence and freedom [138] from bias should be exercised by the jury in the consideration thereof.

25.

Your duty to society and to this defendant obligates you to give your earnest and careful attention to every feature of the case now on trial before you, so that the defendant may not be unjustly convicted nor wrongfully acquitted. Under the solemnity of your oaths as jurors, you must consider all of the evidence in the case, under the instructions of the Court, and upon the law and the evidence you must reach, if you can, a just verdict, which the law and the rights of this defendant demand of you. And, in determining the guilt or innocence of the defendant, under the evidence, it becomes your duty to accept the law of the case as laid down in these instructions. No juror, from mere pride of opinion hastily formed or expressed, should refuse to agree, nor, on the other hand, should he surrender any conscientious views founded on the evidence. It is the duty of each juror to reason with his fellows concerning the facts, with an honest desire to arrive at the truth, and with a view of arriving at a verdict. It should be the object of all the jury to arrive at a common conclusion, and to that end, deliberate with calmness.

In conformity with the law, I have prepared two forms of verdict which you will take with you to your jury room, and, when you shall have unanimously agreed upon a verdict, you will sign, by your foreman, the form upon which you have agreed, and return the same into Court as your verdict, and destroy the other form.

The forms are:

1. Guilty as charged in the Indictment.
2. Not guilty. [139]

I now hand you the written instructions which I have just read to you, for your guidance, and the Indictment; both of which you will return into Court with your verdict.

Given at Fairbanks, Alaska, April 4th, 1916.

CHARLES E. BUNNELL,
District Judge. [140]

Thereupon the defendant, in the presence of the jury and before they retired to deliberate on their verdict, took the following exceptions to the written instructions read by the Court to the jury.

Defendant excepts to instruction numbered 11, on the ground that the same is contradictory with itself, which exception is allowed by the Court.

Defendant excepts to instruction numbered 17 on the ground that it is misleading and contradictory, which exception is allowed by the Court. [141]

[Title of Court and Cause.]

Motion for a New Trial.

The defendant moves the Court for an order setting aside the verdict of the jury in this case, on the following grounds:—

1st. Because of the insufficiency of the evidence to justify the verdict and also because the same is against the law.

2d. For errors of law occurring at the trial and excepted to by the defendant in the particulars specified below:—

(a) Misleading and incorrect statements as to the law applicable to the evidence, in instructions numbered 11 and 17;

(b) In sustaining the objection interposed by the District Attorney to the question propounded to J. J. Patten, a witness in behalf of the defendant, the question being in substance as to whether the witness knew the general moral character by reputation of Grace Carey, the prosecutrix, at Fairbanks, where she resides, and also by the same ruling denying defendant the right to call other witnesses to the same fact;

(c) In permitting the Government over his objections and exceptions to cross-examine the defendant as a witness in his own behalf, as to the contents of a written statement made by him in the Marshal's Office, and his evidence in relation thereto at the trial of Wooldridge in this Court.

(d) In receiving in evidence, in rebuttal, over his objections and exceptions, the testimony of Deputy Marshals Hall and Miller as to the circumstances under which defendant signed, and the contents of the written statement referred to in subdivision "C." [142]

3d. Because of newly discovered evidence material to the defendant's case, which he was not aware of and could not produce at the trial.

LOUIS K. PRATT,

Attorney for Defendant.

Service of the above motion admitted, by copy thereof, this 6th day of April, 1916.

R. F. ROTH,

United States Attorney. [143]

Service of a copy of the foregoing this 3d day of May, 1916.

R. F. ROTH,
U. S. Attorney.

[Endorsed]: Filed May 3, 1916. Refiled May 6, 1916. [144]

[Title of Court and Cause.]

Notice of Hearing of Settlement of Bill of Exceptions.

To R. F. Roth, U. S. Dist. Atty.,

Attorney for above-named plaintiff:

You are hereby notified that at 10 o'clock A. M. on the 6th day of May, 1916, or as soon thereafter as counsel can be heard, at the courtroom of the above-named court, at Fairbanks, Alaska, the issues in the above-entitled action, raised by the application of defendant for the settlement of his Bill of Exceptions will be brought on for the signature of the District Judge of said Div. to the certificate attached thereto and for an order for filing the same and making it a part of the record in the case.

LOUIS K. PRATT,

Attorney for Deft.

Time of hearing of matter above set forth as per written notice is hereby shortened to May 6th, 1916.

CHARLES E. BUNNELL,

District Judge.

Service by receipt of a copy of the above notice acknowledged this 3d day of May, 1916.

R. F. ROTH,
Attorney for Plaintiff.

[Endorsed]: Filed May 3, 1916. [145]

[Title of Court and Cause.]

Order Allowing Defendant's Proposed Bill of Exceptions.

Now, on this day, Harry E. Pratt, Assistant United States Attorney appearing in behalf of plaintiff, and Louis K. Pratt, Esq., appearing in behalf of defendant, and this being the time set for hearing defendant's proposed Bill of Exceptions herein, and counsel for the Government having been duly served with a copy of same and making no objection thereto, said proposed Bill of Exceptions is hereby allowed.

CHARLES E. BUNNELL,
District Judge. [146]

[Title of Court and Cause.]

Certificate to Bill of Exceptions, and Order.

United States of America,
Territory of Alaska,—ss.

I, the undersigned Judge of said Court, hereby certify that the foregoing contains a full, true and correct transcript of all the evidence introduced and heard at the trial of said action, together with all objections and exceptions taken to the admission

and rejection of testimony; the Instructions of the Court as read to the jury, with the exceptions thereto by defendant, and the motion for a new trial; and that the same is a true bill of exceptions of all matters therein contained, not otherwise appearing of record.

It is therefore ordered that the Clerk of the Court file the same as such bill of exceptions, the same when filed to be and remain a part of the record in the said case.

Dated at Fairbanks, Alaska, the 6th day of May, 1916.

CHARLES E. BUNNELL,
District Judge.

Entered in Court Journal No. 13, page 548.

[Endorsed]: Filed May 6, 1916. [147]

[Title of Court and Cause.]

**Motion for Order Allowing Supersedeas and Fixing
Amount of Bond.**

The defendant moves the Court for an order allowing a supersedeas in this case and fixing the amount of the bond, and providing that such bond when given and approved by the Judge of said court, shall operate as a supersedeas and stay the further execution of the judgment and sentence herein.

The records and files in the case will be used at the hearing of this motion.

LOUIS K. PRATT,
Attorney for Defendant.

Service of the foregoing motion admitted and receipt of a copy acknowledged this 15th day of May, A. D. 1916.

R. F. ROTH,

United States Attorney.

[Endorsed]: Filed May 15, 1916. [148]

[Title of Court and Cause.]

Order Denying Motion for Supersedeas and Fixing Amount of Bond.

Now, on this day, Louis K. Pratt, Esq., counsel for defendant, having filed in open court a motion for an order allowing supersedeas and fixing amount of bond herein and said motion having been considered by the Court,

It is ordered that said motion be, and the same is, hereby denied.

CHARLES E. BUNNELL,

District Judge. [150]

[Title of Court and Cause.]

Assignment of Errors.

The defendant below and plaintiff in error will rely for a reversal of the judgment and sentence herein on the following errors committed by the Court during the progress of the trial, to wit:

I.

The Court erred in overruling the demurrer to the indictment herein charging him with statutory

rape interposed by the defendant before his plea.

II.

The Court erred in sustaining objections to and in refusing to permit answers to be made by Grace Carey, the prosecutrix, to question asked by defendant's attorney in cross-examination, the object and purpose of which was to show that, in the summer of 1915, on the occasion of her making a trip by river steamers from Fairbanks to Dikeman and return, she had had indiscriminate sexual intercourse with the cooks, waiters, cabin boys, some of the officers and others aboard the steamer "Washburn," on the trip from Holy Cross, Alaska, to Dikeman, and from the latter point back to Tanana or Fort Gibbon, and also with the soldiers at Fort Gibbon.

III.

The Court erred in allowing the District Attorney to propound questions in cross-examination to defendant while on the stand as a witness in his own behalf and in requiring defendant [152] to answer such questions over his objections, to the effect and in substance that he, defendant, on the evening of February 15th, 1916, at his shop on Lacey Street, Fairbanks, had heard a conversation with one W. H. Wooldridge, and that later in the evening of the same day, defendant made a statement concerning such conversation at the Marshal's office in Fairbanks, in the presence of J. H. Miller, Chief Deputy Marshal, and four other deputies, which statement was taken down in writing by said J. H. Miller, and sworn to before Frank Hall, one

of said deputies present and that said statement contained one clause in the language following: "Wooldridge asked me about Laura while I was lying on the bed and said he wanted to screw her or words that gave me to understand that he wanted to have sexual intercourse with her." That defendant was then interrogated as to his testimony as a witness for the Government, delivered March 9, 1916, in the case of United States of America vs. W. H. Wooldridge, on a charge of statutory rape and attempt against the person of one Laura Herington and long extracts from his said testimony were read to him, all of which he was compelled to admit he had given at said trial, which conflicted with and modified the extract from said statement signed on February 15th, 1916.

IV.

The Court erred in allowing the Government to call as witnesses in rebuttal said J. H. Miller and Frank Hall and in permitting them to testify over his objections to the circumstances under which said statement of February 15th, 1916 was prepared, all the details thereof and defendants knowledge of its contents, the said statement being properly identified and showed to the said witnesses and examined by them while giving their evidence, such testimony when compared with said statement and defendant's [153] sworn evidence as a witness for the Government in the Wooldridge case, showing a prima facie case of perjury against him.

V.

The Court erred in sustaining the objections of

the District Attorney to and refusing an answer to the question propounded by defendant's attorney to J. J. Patton, a witness for defendant, as follows:

"Q. Do you know what her (refers to Grace Carey) general moral character is as made up from general reputation on that subject?"

VI.

The Court erred in giving and reading to the jury that part of its charge numbered 17 in the following language:

"17

"You are further instructed that it is the policy of our law, as expressed in the statute, that any female under the age of sixteen years shall be incapable of consenting to the act of sexual intercourse and that anyone committing the act with a girl within that age shall be guilty of rape, notwithstanding he obtained her consent thereto; that whether the girl in fact consented or resisted is immaterial in this case. In this case neither the element of force nor question of consent has any application. The witness, Grace Carey, could not consent, and the law resists for her."

VII.

The Court erred in overruling defendant's motion for a new trial.

VIII.

The Court erred in pronouncing sentence against him and adjudging that he be punished by imprisonment in the penitentiary at McNeil's Island, State

of Washington, for a period of eight years. [154]

LOUIS K. PRATT,

Attorney for Defendant below and Plaintiff in Error.

Service and receipt of copy of the foregoing Assignment of Error is hereby admitted this 15th day of May, 1916.

R. F. ROTH,

United States Attorney.

[Endorsed]: Filed May 15, 1916. [155]

Writ of Error.

UNITED STATES OF AMERICA,—ss.

The President of the United States, to the Honorable, the Judge of the District Court, for the Territory of Alaska and District of Alaska, Fourth Division, Greeting:

Because in the record and proceedings, as also in the rendition of the sentence and judgment in a criminal action in said District Court before you between J. P. Rose, defendant below, and plaintiff in error, and the United States of America, defendant in error, a manifest error hath happened to the great damage of the said defendant below and plaintiff in error, as by his petition for a writ of error appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of

San Francisco, in the State of California, on the 14th day of June, 1916, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States the 15th day of May, 1916.

[Seal]

J. E. CLARK,

Clerk of the U. S. District Court for the Territory of
Alaska, Fourth Division. [157]

The foregoing Writ is hereby allowed.

CHARLES E. BUNNELL,

Judge.

Service of the foregoing Writ of Error and receipt of copy thereof is hereby admitted this 15th day of May, 1916.

R. F. ROTH,

U. S. District Attorney. [158]

Citation on Writ of Error.

UNITED STATES OF AMERICA,—ss.

The President of the United States, to R. F. Roth,
U. S. District Attorney, Fourth Division, Territory of Alaska:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to a writ

of error filed in the Clerk's office of the District Court for the Territory and District of Alaska, of the Fourth Judicial Division thereof, wherein J. P. Rose is the plaintiff in error and the United States of America is the defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the plaintiff in error in that behalf.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States of America, this 15th day of May, 1916, and of the Independence of the United States the one hundred and thirty-ninth.

CHARLES E. BUNNELL,
District Court Judge Presiding in the District Court
for the Territory and District of Alaska, Fourth
Division.

ATTEST:

[Seal] J. E. CLARK,
Clerk of the District Court for the Territory and Dis-
trict of Alaska, Fourth Division.

Service of the above Citation by the receipt of a copy thereof is hereby admitted this 15th day of May, 1916.

R. F. ROTH,
U. S. District Attorney. [160]

[Title of Court and Cause.]

Order Enlarging Return Day.

On application of the said plaintiff in error, by reason of the great distance between Fairbanks,

Alaska, and San Francisco, California, and the delays and uncertainties of the transmission of mail matter between the said points,

IT IS ORDERED that the return day of the writ of error allowed in this cause, returnable on the 14th day of June, A. D. 1916, be enlarged to the first day of August, A. D. 1916.

Dated at Fairbanks, Alaska, this 15th day of May, 1916.

CHARLES E. BUNNELL,
Judge.

Entered in Court Journal No. 13, Page 561.

Service of the above Order is hereby admitted this 15th day of May, 1916.

R. F. ROTH,
U. S. District Attorney. [161]

[Title of Court and Cause.]

Certificate of Clerk, U. S. District Court to Transcript of Record.

United States of America,
Territory of Alaska,
Fourth Division,—ss.

I, J. E. Clark, Clerk of the District Court, Territory of Alaska, Fourth Division, do hereby certify that the foregoing, consisting of one hundred and sixty-two pages numbered from 1 to 162 inclusive, constitutes a full, true and correct transcript on writ of error in Cause No. 722—Criminal, entitled United States of America, Plaintiff, vs. J. P. Rose, Defendant, wherein J. P. Rose is plaintiff in error, and the United States of America is defendant in error, and was made pursuant to and in accordance with the

praecipe of the plaintiff in error filed in this action and made a part of this transcript, and by virtue of the citation issued in said cause and is the return thereof in accordance therewith.

And I do further certify that the index thereof, consisting of pages i to iii, is a correct index of said transcript on appeal; also that the costs of preparing said transcript and this certificate, amounting to Sixty-five and 30/100 (\$65.30) Dollars, has been paid to me by counsel for plaintiff in error in said action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court this 29th day of May, A. D. 1916.

[Seal]

J. E. CLARK,

Clerk of the District Court, Territory of Alaska,
Fourth Judicial Division.

By Sidney Stewart,

Deputy Clerk. [162]

[Endorsed]: No. 2819. United States Circuit Court of Appeals for the Ninth Circuit. J. P. Rose, Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Territory of Alaska, Fourth Division.

Filed June 30, 1916.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.

[Title of Court and Cause.]

Stipulation under Rule 23.

It is stipulated between the attorneys for the parties respectively that in printing the record in this case for use in the said Court, all captions should be omitted after the title of the cause has once been printed, and the words "caption and title" and the name of the paper or document should be substituted therefor; also that after printing the endorsements and file marks on the indictment, bill of exceptions, record in the Appellate Court, and on the exhibits introduced in evidence and offered, the indorsements and file marks on all other papers should be omitted, and the words "file marks" printed in lieu thereof. After printing the assignment of errors, writ of error and citation other papers connected with the writ of error need not be inserted in the record. Otherwise than as above indicated we desire that the transcript of the case be printed in its entirety.

LOUIS K. PRATT,

Attorney for Plaintiff in Error.

R. F. ROTH,

United States Dist. Attorney.

By H. E. PRATT,

Deputy U. S. Atty. [164]

[Endorsed]: No. 2819. In the United States States Circuit Court of Appeals for the Ninth Circuit. J. P. Rose, Plaintiff in Error, vs. The United States of America, Defendant in Error. Stipulation as to Printing Record. Filed Jul. 22, 1916. F. D. Monckton, Clerk.